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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 161.

HENRY HILTON AND WILLIAM LIBBEY, COMPOSING THE FIRM OF ALEXANDER T. STEWART & CO., PLAINTIFFS IN ERROR,

vs.

EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 20, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Henry Hilton and William Libbey, composing the firm of Alexander T. Stewart & Co., plaintiffs, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the plaintiffs, as is said, and as appears by their complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of the October term, 1880, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of October, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the hundred & fifth.

[SEAL.] J. M. DEUEL,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed, Oct. 5, 1880.

SAM'L BLATCHFORD.

2 (Indorsed:) U. S. circuit court, southern district of New York. 5712. Henry Hilton & ano. vs. Edwin A. Merritt. Writ of error. Alexander & Green, att'ys for plaintiffs, 120 Broadway, New York City. U. S. circuit court. Filed Oct. 5, 1880. Joseph M. Deuel, clerk.

Due service of a copy of the within writ of error is hereby admitted. New York, Oct. 5, 1880.

STEWART L. WOODFORD,
U. S. Attorney, Att'y for Def't in Error.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph M. Deuel, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by
3 virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from four to four hundred twenty-seven, inclusive, contains a true and complete transcript

of the record and proceedings had in said court in the case of Henry Hilton and William Libbey, composing the firm of Alexander T. Stewart & Co., plaintiffs' in error, against Edwin A. Merrett, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of October, in the year of ur Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fifth.

[SEAL.] J. M. DEUEL, *Clerk.*

4 *Summons.*

N. Y. supreme court.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of Alex. T. Stewart & Company, plaintiffs, *against* EDWIN A. MERRITT, DEFENDANT.	Trial to be had in the city & county of New York.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service. Judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, January 30th, 1879.

ALEXANDER & GREEN,
Plaintiffs' Attorneys, 120 Broadway, New York City.

Office & P. O. address: 120 Broadway, New York City.

5 (Endorsed:) N. Y. supreme court, city & county of New York. Henry Hilton & William Libbey, composing the firm of Alex. T. Stewart & Company, plaintiffs, against Edwin A. Merritt, defendant. Summons. Alexander & Green, plaintiffs' attorneys, 120 Broadway, New York City, to Edwin A. Merritt, defendant. Rec'd Jan'y 30, 1879. E. A. M., p'r J. T. Received Feb. 15, 1879, U. S. attorney's office.

6 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Edwin A. Merritt, defendant, by Henry Hilton & ano., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 1st day of March, 1879, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 26th day of Feb'y, in the year one thousand eight hundred and seventy-nine.

JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
Defendant's Attorney.

7 (Indorsed:) U. S. circuit court. Henry Hilton & ano. vs. Edwin A. Merritt. Copy certiorari. Stewart L. Woodford, defendant's attorney.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Feb'y 26, 1879.

Yours,

STEWART L. WOODFORD,
Defendant's Attorney.

A. & G., *Plaintiffs' Attorney.*

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Feb'y 26, 1879.

ALEXANDER & GREEN,
Plaintiffs' Attorney.

8 *Complaint.*

Circuit court of the United States for the southern district of New York.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of Alexander T. Stewart & Company, plaintiffs, *against* EDWIN A. MERRITT, DEFENDANT.	Trial to be had in the county of New York.

The above-named plaintiffs for complaint in this action state:

I. That during the times hereinafter mentioned the defendant was collector of customs at the port of New York, or acting as such officer.

2. II. That the plaintiffs during said time were copartners in trade, doing business as merchants, in the city of New York and elsewhere, under the firm-name of Alexander T. Stewart & Company; that at the time specified in the bill of particulars of plaintiffs' demand served in this action the plaintiff duly imported and entered at the port of New York the merchandize described in the said bill of particulars.

3. III. That defendant, as such collector, exacted from plaintiffs,
9 as and for duties on said merchandize, the sum of two thousand six hundred and ninety-two dollars and ninety cents.

4th. That by the laws of the United States the fair, true, and proper duty chargeable upon said goods was one thousand six hundred and fifty-five dollars and fifty cents; and plaintiff, in order to obtain possession of said goods, were compelled to pay, and did pay, the sum of one thousand

and thirty-seven dollars and forty cents, in gold coin of the United States, in excess of the amount properly chargeable for duties on said merchandize according to law.

V. That plaintiffs filed with said defendant due and timely protest in writing, upon said entry of said goods, and at or before payment of said excessive duties, protesting against the defendant's decision exacting such duty, and setting forth distinctly and specifically the grounds of objection thereto; and also that plaintiffs paid excessive charges under compulsion and in order to get possession of said goods.

VI. That plaintiffs made due and timely appeal to the Secretary of the Treasury, who affirmed the said decision of defendant.

10 VII. That the bill of particulars of plaintiffs' demand served herein, and which plaintiffs make a part hereof, states the date of entry at the custom-house, the precise amount of duty claimed to have been exacted in excess, the date of payment of said duties, of the filing of the said protest, of the appeal to the Secretary of the Treasury, and of his decision thereon, the description of said merchandize, together with the other particulars required by law.

VIII. That the sum so exacted as aforesaid has never been repaid to plaintiffs, and is still justly due and owing to them, with interest.

Wherefore plaintiffs demand judgment against defendant for the sum of one thousand and thirty-seven dollars and forty cents, in United States gold coin, with interest from the twenty-third day of October, 1878, besides the costs and disbursements of this action.

ALEXANDER & GREEN,
Attorneys for Plaintiffs.

(Endorsed:) Circuit court of the United States for the southern
11 district of New York. 5712. Henry Hilton and William Libbey, composing the firm of Alexander T. Stewart & Company, against Edwin A. Merritt. Complaint. Alexander & Green, plaintiffs' attorneys, 120 Broadway, New York. To Stewart L. Woodford, esq., def't's att'y. Received Mar. 5, 1879, U. S. attorney's office.

12 Circuit court of the United States for the southern district of New York.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of Alexander T. Stewart & Company, plaintiffs,
against
EDWIN A. MERRITT, DEFENDANT.

NEW YORK, *March*, 1879.

To STEWART L. WOODFORD, Esq.:

SIR: Please take notice that the following is a bill of particulars of the plaintiffs' demand in this case, and that this action is brought for the recovery of duties alleged to have been erroneously or illegally exacted by the defendant, as the collector of customs, at the port of New York, on merchandize imported in the vessel and at the date in the said bill of particulars specified.

13 *Bill of particulars of plaintiff's demand.*

Name of importers.	Description of merchandize.	Place from which imported.	Name of the vessel.	Date of invoice.	Date of entry at custom-house.
Henry Hilton and William Libbey, comprising the firm of Alexander T. Stewart & Company.	Two cases of kid gloves, marked "A.T.S. & Co." L. 462 & 463.	Paris, France	Steamer Mosel	April 1st, 1878	June 21, 1878

Name of importers.	Amount of excess of duty claimed.	Date of payment.	Date of protest filed.	Date of appeal to Secretary of Treasury.	Date of decision on such appeal.
Henry Hilton and William Libbey, comprising the firm of Alexander T. Stewart & Company.	$1,037 40	October 23, 1878	October 23, 1878	October 23, 1878	November 5, 1878.

Yours, &c.,

ALEXANDER & GREEN,
Attorneys for Plaintiffs, 120 *Broadway.*

(Endorsed:) Circuit court of the United States for the southern district of New York. 5712. Henry Hilton and William Libbey, comprising the firm of Alexander T. Stewart & Company, against Edwin A. Merritt. Bill of particulars. Alexander & Green, plaintiffs' attorneys, 120 Broadway, New York. To Stewart L. Woodford, esq., def't's att'y. Received Mar. 5, U. S. attorney's office.

14 *Affidavit of service of answer.*

U. S. circuit court.

HENRY HILTON ET AL.
against
E. A. MERRITT.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Wm. H. Daily, being duly sworn, says he is a clerk in the office of Stewart L. Woodford, United States attorney; that on the 7th day of March, 1879, he served a copy of the hereto annexed answer upon Alexander & Green, pl'ffs' attorneys; and deponent further says that he is over sixteen years of age.

WM. H. DAILY.

Sworn to before me this 8th day of March, 1879.

JAMES L. ROBINSON,
Notary Public, Kings County (certif. filed in N. Y. Co.).

15 United States circuit court, southern district of New York.

HENRY HILTON & ANO
versus
EDWIN A. MERRITT, COLLECTOR, ETC.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action:

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter, and before the commencement of this action or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys so received from plaintiffs were the amounts due from them to the United States according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' import entry thereof were collected or received by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant, herein answering, doth aver and state, that said merchandise was not dutiable, according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether upon the importations in question protests and appeals were made by the plaintiffs conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

16 SOUTHERN DISTRICT OF NEW YORK.

City and County of New York, ss:

Edwin A. Merritt, being duly sworn, says that he is the defendant above named, that the forgoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this day of , 188 .

Notary Public, New York County.

(Indorsed:) 5712. U. S. circuit court, southern district of New York. Henry Hilton & al. vs. Edwin A. Merritt, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant.

Due service of a copy of the within answer is hereby admitted.
NEW YORK, , 188 .

, plaintiffs' attorney, to , plaintiffs' attorney. A G.

17 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Tuesday, the fourth day of May, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Nathaniel Shipman, circuit judge.

HENRY HILTON ET AL.
vs.
EDWIN A. MERRITT. } 5712.

On motion of Ashbell Green, esqr., of counsel for the plaintiffs in the above-entitled action, ordered trial.

Jurors sworn: John Abbatt, Erastus S. Brown, Ira Bursley, Louis C. Clark, Edward H. Faulkner, Chas. W. Kent, Thos. Andrews, Edwin R. Bertine, Thos. Chatterton, Jas. H. Davidson, Joseph Graham, Maltby G. Lane.

H. F. Tremain, esq., of counsel for the plaintiffs, opens the case on the part of the plaintiffs.

Evidence for the plaintiffs:

Plaintiffs' invoice No. 941.

18 Plaintiffs' entry No 7477.

Benjamin Tuzo sworn.

Pl'ffs' Exhibit C, D, E, F, G, H, I.

Benjamin Tuzo, recalled.

Pl'ffs' Exhibit K.

Addison D. Hildreth sworn.

(On margin:) H. H. M.

19 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday the fifth day of May, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Nathaniel Shipman, circuit judge.

HENRY HILTON ET AL.
vs. } 5712.
EDWIN A. MERRITT.

This case being still on trial, the jurors sworn in it are called and severally answered to their names.

Evidence for the plaintiffs:
Addison D. Hilbreth recalled.
Benjamin Tuzo "
Edwin A. Merritt sworn.
M. C. Perry sworn.
Simon Seligman "

Stewart L. Woodford, esq., of counsel for the defendant, moves that the court direct the jury to find a verdict for the defendant.

The court grants said motion and directs the jury to find a verdict for the defendant.

The jury say that by direction of the court they find a verdict
20 for the defendant, and so say they all.

Prior to the rendering and recording of the verdict, Mr. Tremaine excepts to the ruling of the court in directing the jury to find a verdict for the defendant.

On motion of Mr. Tremaine, ordered that the plaintiffs have thirty days stay of proceedings herein within which to prepare and serve a bill of exceptions.

A copy from the minutes.

JOHN I. DAVENPORT, *Clerk.*

21 *Judgment.* , 187 .

United States circuit court, southern district of New York.

HENRY HILTON AND WILLIAM LIBBEY
vs. }
EDWIN MERRITT.

The issues in this action having been brought on for trial, before Mr. Judge Shipman and a jury, at a circuit court of the April term, 1880, and the issues having been tried, and a verdict for the defendant having been duly rendered on the fifth day of May, 1880, and his costs having been adjusted at $48.91:

Now, on motion of Stewart L. Woodford, United States attorney for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.91, his taxed costs, and have execution therefor.

Judgment signed this 30' day of Sept., 1880.

J. M. DEUEL, *Dep'y Clerk.*

22 (Indorsed:) United States circuit court. Henry Hilton & William Libbey vs. E. A. Merritt. Judgment-roll. Stewart L. Woodford, United States attorney, for defendant. Filed , 187 . Costs $48.91. U. S. circuit court. Filed Sep. 30, 1880. John I. Davenport, clerk.

23 United States circuit court, southern district of New York.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of Alexander T. Stewart & Co.,
against
EDWIN A. MERRITT, COLLECTOR OF THE port of New York.

Proposed bill of exceptions.

The issues in this case came on for trial at the April term of this court, at a session held by the honorable Nathaniel Shipman, district judge, sitting as circuit judge, and a jury, at the court-room in the city of New York, on the 4th and 5th days of May, 1880, the plaintiffs being represented by John J. McCook, esqr., and H. E. Tremain, esqr., and the defendant by the United States attorney.

And in the course of said trial divers exceptions were taken by
24 the counsel for the plaintiffs to the rulings of said court in the admission and exclusion of evidence, and to the direction of the court to the jury, and to the refusal of the court to present the said issues or any of them to the jury, or to charge the jury as requested by the plaintiffs, and in divers other respects, which said several exceptions were then and there allowed by said court, and more fully and at large appear in this bill of complaint.

To sustain the issues on the part of the plaintiffs testimony was adduced as follows, and the following contains substantially the proceedings of said trial:

The plaintiffs read in evidence the following invoice and entries showing the importation by the plaintiffs into the port of New York from a foreign country of the merchandise in said papers set forth.

The invoice is marked "Plaintiffs' Exhibit A, May 4, 1880," and is as follows:

EXHIBIT A.

25 *Copy Pl'ffs' Ex't A, May 4, '80.*

No. 941.] PARIS, 1*st Avril* 1878.

Messieurs. Ch. Fortin & Cie., de Paris, expediente en consignation à Messrs. A. T. Stewart & Cie., à New York, 2 caisses contenante Gants de Pean et chargeés sur. steamer Mosel.

(On face:) Warehouse. 5.

A. T. S. & Co. [L], 462, add to make market value.

	Doz									
844	42	hommes noirs	nervures	bouton,		12 f'cs	per doz.	40.00	1,680.00	
	14.6	½ longs hommes blancs	" 2	"		12 "	"	41 "	594.50	
856	12 "	" " bruns foncés	" "	"		12 "	"	42 "	504 "	
	6 "	¼ " " "	" 3	"	12 doz.	12 "	"	45 "	540 "	
	6 "	" " clairs	" "	"						
896	2.6	⅛ " hommes clairs	" 2	"		12 "	"	41 "	102.50	
902	53.6	" " sirede noirs inseams	" "	"				23 "	1,230.50	
	29 "	¼ " " "	" 3	"				25 "	725	
911 fin.	5.9	Extra longs clairs bords blancs	8	"		24 f'cs	doz.	58 "	333.50	Leather gloves, 50 %.
	3.9	" " " "	" 10	"	9 doz.					
	5.3	" " blancs	" "	"		24 "	"	68• "	612 "	
920 fin.	13 "	½ longs blancs	2	"		12 "	"	40 "	520 "	
	3 "	¾ " "	3	"	11.6 doz.					
	8.6	¼ " clairs	"	"		12 "	"	45 "	517.50	
									7,359.50	
	6%								441.55	
									6,917.95	
	204.9 doz., Rl.f., Oct. 14. Embge								23.55	6,941.50

463

	Dz.									
920 fin.	55.6	¼ longs ardoisé	nervures	3 buttons,		f'cs	12 per doz	45 "	2,497.50	
	16 "	½ " clairs	" 4	"	40 dz.	" 14	" "	48 "	1,920 "	
	24 "	" " ardoisé	" "	"						
	30 "	longs clairs bords blancs	" 6	"		" 18	" "	54 "	1,620 "	
926	33 "	¼ " mi-foncés	" 3	"	70 dz.	" 12	" "	45 "	3,150 "	
	37 "	" " ardoisé	" "	"						
	21 "	⅛ " hommes blancs	" 2	"		" 12	" "	41 "	861 "	
928	5 "	" " bruns	" "	"		" 12	" "	43 "	215 "	
									10,263.50	
50 %.	Less 6 % on advance (A. Reporter, c. s.)									6,941.50
									10,263.50	
26 A. T. S. & Co., L.	463. Reports								615.80	6,941.50
	D. 3—221.6								9,647.70	
	Embge								23.90	
										9,671 50
	Net francs									16,613.10

J. Jackson, sixteen thousand six hundred and thirteen $\frac{10}{}$; f'cs, 19.3 ch., 40.00; com., 3%.

50%.

I certify that this invoice was presented to me on entry st. Mosel. Custom-house, New York, this 22' day of June, 1878.

Warehouse, Hoboken stores.

J. M. BYNNER.
B. N. N.

W. D. W. CEVES.

AUGUST 7TH, 1878.

Case, A. T. S. & Co. (L.), $462.
" " 463.
As noted.—S. C., a. W. B. Hoyt.

Add to make market value as noted on face of invoice.

G. C.

Approved.

S. B. DUTCHER,
Appraiser.

Reppraisement, $10. Rec. Aug. 10.

C. F.

SEPT. 16, '78.

Referring to Dep't's letters of July 20, '78, & importer's letter of Sept. 11, '78, estimate deposit to cover all.

J. M.

(Stamped:) Warehouse. Rec'd in sixth division June 22, 1878.

27 *Declaration where goods, wares, and merchandise have not been purchased.*

Je, soussigné, déclare que je suis fondé de pouvoir de fabricant des denrées, produits, et marchandises désignés dans la facture maintenant produite et ce annexée; que la dite facture est vraie et loyole à tous égards qu'elle contient un compte plein et fidèle du véritable prix courant des dits denrées, produits, et marchandises au temps et au lieu où les mêmes ont été acquis ou fabriqués; que la dite facture ne contient que les escomptes, primes, et décomptes réellement alloués, et qu'aucune autre facture des dits denrées, produits, et marchandises n'a été et ne sera fournie à qui que ce soit. Je déclare en outre que les dits denrées, produits, et marchandises sont en destination du port de New York, aux Etats-Unis d'Amérique.

L. MARTIN.

U. S. CONSULATE-GENERAL AT PARIS (FRANCE).

I do hereby certify that the within invoice numbered, 4430, in which are mentioned and described certain goods, wares, and merchan-
28 dise, amounting, with the charges thereon, to the gross sum of 16,613.10 fr'cs, was produced to me by the subscriber of the foregoing, who thereupon declared that it was intended to make entry of said goods, wares, and merchandise at the port above named. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that, so far as I have the means of knowing, the statements made in the said declaration are true.

Witness my hand and the consular seal the 1st day of April, 1878.

Received, $2.50.

[L. S.] (Signed in triplicate) ROBT. M. HUPER,
Du. Consul-General at Paris (France).

29 It was then proven that upon presenting this invoice at the custom-house, the plaintiffs made two entries thereon, one marked "7477," dated June 21, 1878 (being a warehouse entry), and one dated October 23, 1878 (being the withdrawal entry). The said two entries so read in evidence in plaintiffs' behalf were marked "Plaintiffs' Exhibits B 1 and B 2," and are as follows:

7477.

37, 82.

WITHDRAWAL ENTRY.—FORM 4.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, Oct. 23, 1878.

Entry of merchandise intended to be withdrawn from warehouse by Alexander T. Stewart & Co., which was imported into this district on the 21' *June,* 1878, *by Alexander T. Stewart & Co., in the Mosel,* , *master, from Bremen.*

Marks.	Nos.	Packages and description.					50%.					
A. T. S. & Co. L.	462 463	One case leather gloves " " " "			3,847	50	3,847	1,923	50	R.		

Takes all. 2.

G. O. N.
B.

[One word illegible.]
Penalty, 769.40. Rel.
L.
C.

A. T. SEWART & CO.,
Per C. STEKMAN, *Att'y.*

WAREHOUSE ENTRY, FORM 1.

CUSTOM HOUSE, NEW YORK,
Collector's Office, June 21st, 1878.

Entry of merchandise imported on the day of April, 1878, by Alexander T. Stewart & Co., in the stm. Mosel, master, from Bremen.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Per cent.	Per cent.	Per cent.	50 Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Dutiable value of each package.
A. T. S. & Co. L	462	One case leather gloves	204 $\frac{6}{12}$ doz.					6,941.50		Paris,	Ap'll, '78			$1,581		
	463	" " " "	221 $\frac{6}{12}$ "					9,671.60						$2,266		
								16,613.10		19,313.50						
		Freight bill						40		40.00						
		Commission		3%				499.60		580.60						
					F'cs, 19 $\frac{3}{10}$			17,152.70	F'cs.	19,934.10						
								$3,311		$3,847						

Hoboken.
For custom-house.

A. T. STEWART & CO.

hh.
(Erased :) 3,311. 50. 1,655.50. ▷
W. B.
Penalty 3,847, @ 20%=$769.40; 3,847—50%, 1,923.50.

▷ I. S. S.

Passed October 23, '78.

H. D. F.

HILTON ET AL. VS. MERRITT, COLLECTOR. 13

(Indorsed:) O. K. 15, 2, '68. 7,477. E. A. T. Stewart & Co. Mosel. Bremen. 22' June, 1878. Warehouse. May. W. H. Liquidated and notified importer Oct. 23, 1878, brg. Oct. 14.

32 2. *Owner's oath in cases where goods, wares, or merchandise have been actually purchased.*

I, William Libbey, do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of all the goods, wares, and merchandise imported by or consigned to A. T. Stewart & Co., in the Mosel, whereof is master, from Bremen; that the invoice which I now produce a just & faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dying, dressing, finishing, putting up and packing, and no other discounts, drawback, or bounty but such has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them, and that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly & truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on said goods, wares, and merchandise, and that if at any time hereafter I discover any error in the said invoice or in the account now produced, of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

WILLIAM LIBBEY.

2. Sworn to this 22' day of June, 1878, before me.

W. D. HUBER, *Collector.*

(On face:) J. S. B. R. S. Booke.

33 The plaintiff's then read in evidence the appraiser's report to the collector, endorsed upon the foregoing invoice, as follows: "Add to make market value, as noted on the face of the invoice."

"Approved.

"S. B. DUTCHER, *Appraiser.*"

This addition will be found noted in red ink on the original invoice.

Plaintiffs then called upon the defendant to produce the application for the reappraisement which was filed with the collector upon this report. This application was accordingly, later in the trial, produced by the defendant, and appears hereinafter in this bill of exceptions. It was filed with the collector at or about the time of its date.

Plaintiffs then called as witness BENJAMIN INGO, who, being duly sworn and examined, testified in substance as follows:

I am chief clerk to the general appraiser; I occupied that position at the time of the importations in question; I am familiar with the
34 records of the general appraiser in respect to the importation of

the plaintiffs, by the steamer Mosel. It is part of my business to transmit the reports of the general appraiser, and the merchant appraiser to the collector, and to keep a record thereof. I cannot tell exactly when the application for reappraisement in this case was received at our office, because I have not my journal, but I think it was during the summer of 1878; I will give the date at another time. The first report upon this case, from the general appraiser to the collector, left the general appraiser's office in the neighborhood of September 19, 1878. That was the first report. The general appraiser knew who was appointed merchant appraiser about August 27th. We received the merchant appraiser's oath from the merchant apraiser himself, and that was the first intimation that I know of the general appraiser's office had as to who was the merchant appraiser in this case. That is the ordinary course of business.

(At this point plaintiffs' counsel read in evidence the said mer-
35 chant appraiser's oath, which will be found attached to his report, dated September 19th, 1878, hereinafter set forth. (See Exhibit C. The examination of the witness was then resumed.)

Q. After the merchant appraiser's oath, what was the next step in your office on that subject, in respect to the case?

A. That was fixing the first day of the hearing, and August 27th was set for the hearing. I do not keep the record of the hearing. Mr. Donnelly takes all the testimony, and I suppose he took it on that day and on all subsequent days of the hearing on this invoice; I made up that report after the hearing was concluded. This is the first report that was made from the appraiser to the collector after that hearing. The first report was made up by me, and was dated September 19th, 1878—that is, the formal parts of it. It was made up September 19th, containing the items of the invoice with the appraiser's value, and subscribed by the merchant appraiser. This one dated September 19th is the only
36 merchant appraiser's report, and is subscribed by the merchant appraiser.

(The said report of the merchant appraiser was here read in evidence by plaintiffs' counsel, and marked "Plaintiff's Exhibit C, May 4, 1878." It is as follows:

EXHIBIT C.

37 #6298.

[N. Y. Cat. No. 10.]

Merchant appraiser's oath.

CUSTOM-HOUSE, PORT OF NEW YORK,
Collector's Office, August 27, 1878.

I, the undersigned, appointed by the collector of the district of New York to appraise a lot of leather gloves imported per steamship Mosel, from Bremen, the importer having requested a new appraisement thereof in accordance with law, do hereby solemnly swear diligently and faithfully to examine and inspect said lot of leather gloves, and truly to report, to the best of my knowledge and belief, the actual market value or wholesale price thereof at the period of the exportation of the same to the United States, in the principal markets of the country from which the same was imported into the United States, in conformity with the provisions of

the several acts of Congress providing for and regulating the appraisement of imported merchandise. So help me God.

(Signed) HUGH AUCHINCLOSS.

38 Sworn to and subscribed before me this 27' day of August, 187.

J. D. BATCH,
Sp'l Dep. Collector.

(Ed. 10, 8, '78. 1,000.)

(Endorsed:) N. Y. Cat. No. 10. Custom-house, New York. Collector's office, 187 . Oath of merchant appraiser. Copy Pl'ffs' Exhibit C. H. H. We., May 4, '80.

39 [N. Y. Cat. No. 1162 *b.*]

WAREHOUSE, JUNE 22, 1878, § 6,298.—PORT OF NEW YORK.

GENERAL APPRAISER'S OFFICE,
September 19, 1878.

SIR. I have examined a lot of leather gloves, in connection with A. P. Ketchum, G. A., imported by A. T. Stewart & Co. in the steamship Mosel, from Paris, April 1st, 1878, and do hereby certify that in my opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was, and I do therefore appraise the same, as follows:

Marks.	Numbers.	Description of merchandise.	Per doz.	Total value.
A. T. S. & Co. L.		TWO CASES LEATHER GLOVES.	*Francs.*	
Part of.	§ 462	844 42 doz. men's noirs nervures, button	40	1,680
		14.6 " ½ longs men's white " 2 "	41	594.50
		856 12 " " " bruns foncés " " "	42	504
		6 " ¼ " " " " 3 " } 12 doz.	45	540
		6 " " " clairs " " "		
		896 2.6 " ½ " men's clairs " 2 "	41	102.50
		911 fin. 5.9 "extra" clairs bords blancs " 3 "	58	333.50
		3.9 " " " " " " " 10 " } 9 "	68	612
		5.3 " ½ " blancs " 2 "		
		920 fin. 13 " ½ " blancs " 2 "	40	520
		3 " ¼ " " " 3 " } 11.6 "	45	517.50
		8.6 " ¼ " clairs " " "		
	§ 463	920 fin. 55.6 " ¼ " ardoisé " " "	45	2,497.50
		16 " ½ " clairs " 4 " } 40 "	48	1,920
		24 " " " ardoisé " " "		
		30 " " " clairs bords blancs " 6 "	54	1,620
		926 33 " ¼ " mi-foncés " 3 " } 70 "	45	3,150
		37 " " " ardoisé " " "		
		21 " ½ " men's blancs " 2 "	41	861
		928 5 " " " " bruns " " "	43	215
		Francs		15,667.50
		Discount, 6%		940.05
		Francs		14,727.45
Part of.	§ 462	Balance of invoice not advanced by appraiser		1,838.20
		Francs		16,565.65
		Packing		47.45
		Francs		16,613.10

Oct. 12, '78.

See order on report of gen'l appraiser attached.

M.

(Signed) HUGH AUCHINCLOSS,
Merchant Appraiser.

(Ed. 9, 25, 78. 1,000.)

40, 41 At the time this report Exhibit C went down there went with with it a paper of the same date, signed by the general appraiser. I have not that paper here. It is on file at my office. I will get it at the earliest opportunity, and return with it. [It is marked later on in this bill of exceptions.] Subsequent to that time, to wit, about October 10th, there was another report, or a report which went to the collector. This went down October 10th, and was signed by the general appraiser.

(Plaintiffs' counsel reads said paper in evidence, and it is marked " Ex D, May 4.")

EXHIBIT D.

42 [N. Y. Cat. No. 1162 *b.*]

WAREHOUSE, JUNE 22, 1878, 6298.—PORT OF NEW YORK.—R. LF.

GENERAL APPRAISER'S OFFICE, *October*, 1878.

SIR: I have examined a lot of leather gloves, in connection with Auchincloss, M. A., imported by A. T. Stewart & Co. in the steamship Mosel from Paris, April 1st, 1878, and do hereby certify that in my opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was, and I do therefore appraise the same, as follows, in accordance with my letter of even date herewith:

Marks.	Numbers.	Description of merchandise.	Per doz.	Total value.
A. T. S. & Co. Part of.	462-3	TWO CASES OF LEATHER GOODS.	*Francs.*	
	462	844 42 doz. men's noirs nervures, button ..	47	1,974
		14 6 " ½ longs men's white " 2 " ..	48	696
		856 12 " " " bruns foncés " " " ..	49	588
		6 " ¼ " " " " 3 " } 12 doz..	52	624
		6 " " clairs " " " }		
		896 2.6 " ⅛ " men's clairs " 2 " ..	48	120
		911 fin. 5.9 " extra " clairs bords blancs " 8 " ..	79	454.25
		3.9 " " " " " 10 " } 9 " ..	89	801
		5.3 " " " blancs " " " 10 " }		
		920 fin. 13 " ½ " " " 2 " ..	47	611
		3 " ¼ " " " 3 " } 11.6 " ..	52	598
		8.6 " ¼ " clairs " " " }		
	463	920 fin. 55.6 " ¼ " ardoisé " " " ..	52	2,886
		16 " ½ " clairs " 4 " } 40 " ..	57	2,280
		24 " " " ardoisé " " " }		
		30 " " " clairs bords blancs " 6 " ..	67	2,010
		926 33 " ¼ " mi-foncés " 3 " } 70 " ..	52	3,640
		37 " " " ardoisé " " " }		
		22 " ⅛ " men's blancs " 2 " ..	48	1,008
		928 5 " " " " brun " " " ..	50	250
		Francs	.....	18,540.25
		Discount, 6 %.....	.....	1,112.40
		Francs.....	.....	17,427.85
Part of.	462	Balance of invoice not advanced by appraiser.....	.....	1,838.20
		Francs.....	.....	19,266.05
		Packing	.....	47.45
		Francs.....	.....	19,313.50

Seizure waived Oct. 12, '78. F. W. & CO.

3364——2

OCT. 12, '78.

O. Take add. duty & penalty as per this reappraisement. See report of merchant appraiser attached.

J. M.

The collector accepts the general appraiser's advance.

J. S. B.

(Signed) A. P. KETCHUM,
General Appraiser.

43 (Indorsed:) No. 1162 *b*. Port of New York, general appraiser's office, October 10th, 1878. A. P. Ketchum, general appraiser. General appraiser's amended report on appraisement of leather gloves imported by A. T. Stewart & Co., per steamship Mosel, from Paris. Advance, $16\frac{2}{10}$ + %. [SEAL.]

44 Plaintiffs' counsel then reads in evidence the letter of the collector to General Appraiser A. P. Ketcham, dated October 10th, and referred to in the foregoing Exhibit D. This letter is marked "Plaintiffs' Exhibit E, May 4," and is as follows:

EXHIBIT E.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, October 10, 1878.

SIR: I have received the reports on the reappraisement of gloves entered by Wilmerding, Hoguet & Co., per S. S. Lessing; Iseline, Neeser & Co. per S. S. Periere, and A. T. Stewart & Co., per S. S. Mosel, together with a mass of testimony taken at the hearing, and a special report from yourself, giving in extenso your reasons for differing from the merchant appraisers in these cases. The merchant appraisers sustain the invoices or entered value, while you advance the value in two of the cases upwards of 20 %. The law requires the collector in cases of difference to
45 decide between the merchant and general appraiser. I find that it has been the almost universal practice for the collector under these circumstances to adopt the higher valuation. Unwilling to accept this easy method of disposing of troublesome questions, and believing it to be the duty of a Government officer, while carefully protecting the revenue, to see that no injustice is done to the merchant, I have personally devoted much time and attention to the examination of the evidence presented.

It is a matter of surprise that three "discreet" merchants should differ so widely from the general appraiser. With no disposition to evade the responsibility placed upon me by the law, I consider that the interests involved and the vexatious delays in reaching a satisfactory conclusion require that an effort should be made to fix a value which will remain unchallenged. I have therefore to suggest that you re-examine the evidence, in the hope that a result may be reached which shall not, on the one hand, make it appear that the merchants of New York cannot be
46 relied upon to give a fair hearing and correct judgment on a ques-

tion of value, or, on the other hand, that the Government seeks and enforces by its might that which is unjust.

I would call your attention to the conflicting evidence as to the similarity of the glove marketed in London and New York.

I would also call your attention to the amount to be added per button to represent the true value. I find it difficult from the evidence to fix this amount at five francs per dozen.

The three reports are returned herewith.

Very respectfully,

(Signed) E. A. MERRITT,
Collector.

Hon. A. P. KETCHUM,
U. S. General Appraiser.

47 (Endorsed:) Custom-house, collector's office, New York, October 10, 1878. E. A. Merritt, collector. In relation to the importation of gloves imported by Messrs. A. T. Stewart & Co., Iselin, Neeser & Co., and Wilmerding, Hoguet & Co. No. of enclosures. Copy Pl'ffs, Exh. E, May 4, '80.

48 To this letter of the collector to the general appraiser, dated October 10th, there was a reply of the general appraiser to the collector, dated October 10th, 1878, which reply plaintiffs' counsel also then read in evidence.

Said reply was marked "Plaintiffs' Exhibit F," and is as follows:

EXHIBIT F.

Copy Pl'ffs' Exh. F.—May 4, '80.

[Office of U. S. general appraiser, corner of Washington and Hubert streets.]

1 misc., 192.] NEW YORK, *October 10th*, 1878.

To the COLLECTOR OF THE PORT:

SIR: I have received to-day your communication of this date, enclosing my three reports on the reappraisements of the Trefousse, Permiot, and Alexander gloves, and calling my attention to certain considerations in connection therewith.

I fully appreciate the difficulties which attend a determination of the questions involved on the part of the reviewing officer, who is re-
49 quired to pass upon the evidence as it presents itself in written form, and whose duties do not require his attention generally to matters of appraisement.

It is true that three merchants have differed with me in my conclusions. As to one of them, Mr. Dunham, he had already taken such public action against my course on the kid-glove question that it was not to be expected that he would advance the Permiot invoice, under consideration. Besides, while he was acting as merchant appraiser recently in an important case, and before it was determined, the name of his firm was allowed to be attached to a protest of a very peculiar character, made to the Secretary of the Treasury, against certain current action of Government officers connected with the Department, which protest perhaps you will call to mind.

As to Mr. Auchincloss, the merchant appraiser on the Alexandre glove, it seems to me impossible, with his limited knowledge of the sub-
50 ject he had to consider, and the still more limited time which he was able to devote to the consideration of the case in hand, that his judgment should be accepted as of very material weight.

With reference to Mr. Constable, I have mentioned to you in conversation matters that it will be simply necessary for me to allude to in this connection.

As to a re-examination of the evidence which you suggest, I do not believe I could reach from it, and the samples of gloves which I have on hand, any other conclusions than those already arrived at.

There are merchants in New York who would promptly and fully agree with me in those conclusions, but they were not merchants included in the list of those who have acted upon the three reappraisements under consideration. I have even been informed by importers of high standing that the price of 52 francs is too low.

The invoices under consideration were dated, two of them in
51 March and one on the 1st of April. This was nearly seven months ago, and since that date there have been changes (as I have reason to believe from evidence received since my original report was presented) in the foreign market value of first-quality kid gloves.

I am of the opinion that gloves invoiced at the present time might be passed at as low a figure as 49 francs, less 6 %. The adoption of this figure would be exceedingly liberal to the importers for present invoices.

As to the invoices under consideration, I do not feel at liberty to formally withdraw the reports I have already presented, because they were based upon the evidence received on the reappraisements, and I think it is best that they should stand as expressing my convictions based upon that evidence. If, however, you are willing to retain them as memoranda for that purpose, and will accept as substitutes therefor the additional reports which I present herewith, and have designated as "amended"
52 reports, I shall feel that I have met, to the best of my ability, the considerations which your letter sets forth.

The price I submit for the two-button glove is 49 francs. This price allows the importer the benefit of every doubt which, it seems to me, it would be proper for me to consider as entering into the cases in question, and will also serve the purpose of a guiding figure as to the numerous invoices of gloves now awaiting at this port the result of your present conclusions.

As to the rise in francs per button I do not see how I can, with fidelity to my own convictions, make the difference other than 5 francs. The only importer who has proved by testimony at all reliable the cost of his glove per button in francs is Mr. Trouttet, who receives the Jugla glove; he shows it to be four francs. This is actual cost.

The price-lists which I have, and they are numerous (though
53 they were not all applicable to the reappraisements under consideration, and therefor were not used in evidence) indicate that the difference made per button in the foreign market is never less than 5 francs the button, for first-quality gloves, and is very often 6 francs or more, while, as I explained in my original report; the addition which I make is considerably less in proportion than the additional price obtained

for the gloves in the New York market. But furthermore, I am able to produce in connection with this question most reliable testimony from leading importers themselves as to the correctness of my 5-franc price; evidence which was not forthcoming on the reappraisements now under consideration, but which to my mind is conclusive of the correctness of this price, and I have no doubt would be so to your own mind were you to receive it.

Yours, very respectfully,
(Signed) A. P. KETCHUM,
Gen'l Appraiser.

54 (Endorsed:) Office of U. S. general appraiser. New York. , 18 , U. S. general appraiser. No. of enclosures .

55 Plaintiffs' counsel then reads from the general appraiser's report of October 10th (viz, Ex. D) the following extract or endorsement found on its face and proven to have been made at the custom-house by order of the collector: "Seizure waived October 12th, 1878. Take additional duty and penalty as per this appraisement. See report of merchant appraiser attached, the collector. The collector accepts the general appraiser's advance. J. D. B." It was then shown that the words "Seizure waived," also found on the face of said report, were signed by the deputy collector in charge of the seizure bureau, and that the liquidation of duties was upon the basis of the foregoing order of the collector.

Plaintiffs' counsel then read the substance of the liquidation of duties upon the entry already placed in evidence, which is as follows:

Penalty, $3,847.00, at 20 per cent	$769 40
Liquidated value, $3,847.00, at 50 per cent	1,923 50
Total value exacted	$2,692 90

56 Plaintiffs' counsel then stated that the excess exacted on a calculation of 42 francs, as appears by the papers, is $1,037.40, which represents the plaintiffs' claim.

Plaintiffs' counsel then offered in evidence two protests filed by plaintiffs with the collector on the 24th of October. Said two protests are dated respectively October 23 and October 24, are marked respectively "Exhibits G & H," and are as follows:

EXHIBIT G.

57 *Protest of A. T. Stewart & Co.*

NEW YORK, *Oct.* 23, 1878.

SIR: We protest against your decision as to the rate and amount of duties on certain kid gloves, entered by us on the 21st of June, 1878, per steamship Mosel, because said merchandise is only liable under existing laws to duty at 50 per cent. ad valorem on the invoice or entered value thereof; and that there has been no regular or lawful appraisement upon which duties can be legally assessed upon any greater value than the entered value.

We also separately and specifically protest against the imposition of the additional or penal duty of 20 per cent., claiming that there has been no appraisal of the value of the goods in question in excess of the entered value thereof, according to law.

We further separately and specifically protest and claim that after the entry of the goods in question the local appraiser made a report to
58 you of the value of said gloves, with which report we were dissatisfied; and thereupon demanded a reappraisements according to law; which reappraisement was allowed, and a merchant appraiser appointed to be associated with one of the general appraisers; and thereupon proceedings were had before said merchant appraiser and said general appraiser, and the question of the value of said gloves submitted to their determination, whereupon said general appraiser made his report of the value of the goods contained in said invoice, which report, among other things, fixed the value of ladies' two-button gloves at 52 francs per dozen, with a discount of 6 per cent.; and also advanced the value of other of said gloves beyond the entered value thereof; and the merchant appraiser made his report fixing the value of ladies' two-button kid gloves' at 42 francs per dozen, with a discount of 6 per cent., and the other goods of said invoice according to the entered value thereof; and that thereupon, before any duties could be lawfully assessed and before the
59 additional duty of 20 per cent. could lawfully accrue, it became the duty of the collector to decide which of the two said reports he would accept as the value of said goods for the purposes of the assessment of duty.

But we protest and aver that said collector has never decided between said two reports as the law requires, and that no appraisement has been determined by which the true value of the goods for the purpose of levying duties has been ascertained.

We therefore pay the duties demanded upon the value beyond the entered value of said goods and the 20 per centum additional duty under compulsion, and simply to obtain the delivery of our goods.

ALEX. T. STEWART & CO.

Hon. E. A. MERRITT,
Collector of Customs, Port of New York.

(Endorsed:) 3210. A. T. Stewart & Co. Mosel. Custom-house, New York. Received October 24th, 1878.

60 NEW YORK, *Oct.* 24, 1878.

SIR: We hereby protest against the payment of the additional duty & penalty on kid gloves imported by us per st'm. Mosel from Bremen, which arrived at this port April 13, '78, in cases marked "A. T. S. & Co. = 462 & 463," entry for warehouse, bond No. 7477, said addi'onal duty & penalty being incurred on an addition to the prices by reappraisement. We claim that the invoice delivered by us & by which we made entry is correct, & represents the true market value of the gloves described therein, & we pay the amount of the additional duty & penalty, viz, ten

hundred & thirty-seven $\frac{40}{100}$ dollars in order to get possession of our goods, & claim it should be refunded to us.

Respectfully,

ALEX. T. STEWART & CO.

Hon. E. A. MERRITT,
Collector of Customs, Port of New York.

61 (Endorsed:) 3215. A. T. Stewart & Co. Mosel. Custom-house, New York. Received Oct. 24, 1878. Copy pl'ffs' Exh. H. May 4, '80.

62 Examination of witness by plaintiffs resumed:

Q. Have you any other records relating to the proceedings upon this invoice in the general appraiser's office, except that which you will produce to-morrow as you have stated?

A. Nothing.

Cross-examined by Ass't Dist. Att'y HERRICK:

Q. You filled out the formal part, and Mr. Ketcham filled out the other part of the figures, estimates, &c.?

A. Yes, sir; I made the calculation.

Plaintiffs' counsel then called on defendant to produce the certified copy of the plaintiffs' appeal from the collector's decision to the Secretary of the Treasury.

The defendant admitted such an appeal; whereupon plaintiffs read in evidence the decision of the Secretary of the Treasury upon said appeal. Said decision is as follows, and is marked "Pl'ffs' Ex. I:"

EXHIBIT I.

63 *Copy Exh. I.*

9512 E.

H. B. I.] [M.

TREASURY DEPARTMENT,
OFFICE OF THE TREASURY,
Washington, D. C., November 11, 1878.

Messrs. A. T. STEWART & Co.,
New York:

GENTLEMEN: The collector of customs at New York duly forwarded your appeal (9512 E) from the assessment of duty at the rate of 50% ad valorem upon the value found on the reappraisement of certain gloves imported by you, per Mosel, April 13th, and also against the exaction of an additional duty of 20% ad valorem imposed by section 2900 of the Revised Statutes on account of undervaluation in the entry.

The points presented by the protest are against the validity of the reappraisement, and such protest is in the nature of an application to this Department for a review of the proceedings.

64 The questions involved in this case were referred by me to Assistant Secretary French, who, after hearing counsel for yourselves and

other parties interested, has given an opinion, which has been approved by me, a copy of which is herewith enclosed. The conclusions therein arrived at are that the decision of the collector should be approved, and the collector has accordingly been informed that his action in the premises is affirmed by this Department.

Very respectfully, [F.
(Signed) JOHN SHERMAN,
Secretary.

1 enclosure.

(Endorsed:) Pltffs' Exh. I. May 4, '80.

65 Said witness was then further examined in behalf of the plaintiffs, as follows:

Q. Have you the stenographer's notes of the testimony taken before General Appraiser Ketcham upon this reappraisement? If so, please produce them.

A. I have here the written testimony written out by Mr. Donelly, or under his direction, which I identify and produce. It is marked by the court "Plaintiffs' Exhibits K 1, K 2, K 3," &c., which comprised the record of the proceedings had before the merchant appraiser and general appraiser on the reappraisement of the invoice in question, including various documents and several hundred pages of testimony submitted to or received under consideration on the said reappraisement, all of which were subsequently submitted to the collector, as stated by him in his testimony hereinafter set forth.

Q. Now, will you please pick out from that the particular testimony taken on this invoice by the Mosel from other testimony?

66 Plaintiffs' counsel then offers said testimony in evidence.

Assistant District Attorney Herrick, for the defendant, objected to its being received in evidence, on the ground that the law has made the appraiser's judgment the basis of determining the values, and the method by which he arrives at his decision constitutes no part of it or cannot be inquired into in determining whether or not the judgment has been properly formed.

Plaintiffs' counsel states that this particular testimony is offered to show that no finding upon that testimony, of the Treasury regulations and the statutes upon the subject are followed, would warrant the assessment of duties at or above 49 francs; and that the conclusions of the appraiser were irregular & illegal, because he did not follow the instructions of the Treasury Department of April 30, 1877. The evidence was offered
67 to show that the merchant appraiser's decision was not a correct one in view of the evidence and of the rules of the Sec'y of the Treas'y & of the statutes.

The COURT. I rule that that evidence is not competent.

(To the foregoing ruling and to the conclusion of the testimony offered plaintiffs' counsel then and there duly excepted)

The examination of the said witness was then suspended, and resumed on the next day, as hereinafter set forth.

ADDISON D. HILDRETH was then called as a witness on the part of the plaintiffs, and, being sworn, testified substantially as follows:

I am a buyer for the firm of Jordan, Marsh & Co., of hosiery, gloves and underwear, and am familiar with the market price of Alexander kid gloves in 1878, in France. I purchased such gloves in France in 1878.

I went to Fortin & Co. and made inquiries in respect to the price at which such gloves could be had in November, 1878. I know
68 the Alexander kid glove. The two-button ladies' kid glove is the standard of value of kid gloves at wholesale, and was in 1878, and there was a rise in value for each button. I was solicited to buy Alexandre kid gloves; they were offered me by Messrs. Fortin & Co. in the ordinary course of business, as a mercantile transaction.

Q. Now, at what price were you able at that time to buy ladies' two-button Alexandre gloves?

Assistant District Attorney HERRICK. I object to that question; I think it raises the question which properly constitutes the issue in the case. I object because the question of market value cannot be inquired into until some irregularity or unlawful proceeding is shown with reference to the appraisement.

Plaintiffs' counsel then offered to show by this witness the fair market value of ladies' two-button Alexandre kid gloves at the principal
69 markets of the country whence they were exported, to wit, France, at or about the time of the exportation in question; and further offered by this and other witnesses cumulative and corrob'atory testimony to the same purport; and also stated that the particular question now asked is preliminary to further inquiries, upon the general subject of market value, of these and other witnesses.

Objection was sustained & the question was excluded.

(Plaintiffs' counsel then and there duly excepted to said ruling.)

Examination of the witness was then resumed by plaintiffs' counsel, and he testified:

I testified before the general appraiser in respect to the value of Alexandre kid gloves, I think, in March, 1879.

(The stenographer's minutes of the witnesse's testimony upon the reappraisement in question were here produced and proven.

Plaintiffs' counsel offered in evidence the said testimony of Mr.
70 Hildreth, the witness on the stand, given before the general appraiser on the reappraisement in question.

The court asked for what purpose the testimony was offered, and plaintiffs' counsel replied: "As tending to sustain both protests." The court inquired: "Is it offered as tending to show actual fraud on the part of the appraiser?" Plaintiffs' counsel replied: "As tending to show want of power on the part of the collector to make the appraisement in question on the evidence before him."

The district attorney objected to the evidence, and thereupon the court excluded it.

The plaintiffs' counsel then and there duly excepted to said ruling.

The excluded notes affected by this ruling are as follows:)

71 ADDISON D. HILDRETH, being duly sworn, testified as follows:

By the GEN'L APPRAISER:

Q. Where do you do business?
A. Boston.
Q. With what house are you connected?
A. Jordan, Marsh & Co.
Q. In what capacity?
A. As buyer of hosiery, gloves, and underwear.

By Mr. McCOOK:

Q. Have you recently been to Paris?
A. I was in Paris in November, 1878?
Q. While there did you learn anything about the price in Paris of kid gloves?
A. Only of the Alexandre.
Q. What was your information upon that point?
A. The price?
Q. Yes.
A. A. 42 francs for two buttons and 45 for three.
Q. Were the gloves offered at that figure?
A. They were.
Q. In considerable amounts?
A. I think the amount was about eight thousand dozen; from six to eight thousand dozen.
Q. Was there any discount offered?
A. Six per cent.

72 Q. Were you solicited to buy gloves at that price?
A. I was.
Q. By Messrs. Fortin & Co.?
A. Yes, sir.
Q. Did you make any order?
A. I did not.
Q. Why did you not make an order?
A. Because I had already placed my orders for the spring, and we don't use a large amount of that class of goods.

By the GEN'L APPRAISER:

Q. How large an amount do you use?
A. The first quality of gloves?
Q. Yes.
A. I suppose we use about a thousand dozen a year.
Q. Whose make?
A. We generally sell Tréfousse; but, then, we sell all makes.
Q. You find that your customers prefer the Tréfousse glove, I suppose?
A. They prefer them on account of the stamp.
Q. You really would not have much of a sale for the Alexandre gloves, would you?
A. I don't know; we have never tried it.
Q. It was in November, you say, that this offer was made?
A. The latter part of November.
Q. Who made it?

73 A. It was made by Fortin and also by Mr. Kingman.

Q. Was Mr. Kingman then in Paris?
A. He has charge of A. T. Stewart's Paris house.
Q. I know him very well.
A. He was then in Paris.
Q. No; it is the other Mr. Kingman that I know. He has charge of that Paris house?
A. Yes, sir.
Q. Did he make that offer to you first, or did you ask him first?
A. He made the offer to me first. He wanted to sell the goods.
Q. At 42 francs?
A. Yes, sir.
Q. How did he come to make the offer; have you any idea?
A. We were talking about this glove business, and Mr. Kingman sent for me to offer me these gloves.
Q. About the trouble in the custom-house here?
A. Yes—no, not Mr. Kingman. I was talking with another gentleman, and later I was sent for by Mr. Kingman and offered these gloves.
Q. Who was the other party?
A. Mr. Sylvester.
Q. Who is Mr. Sylvester?
A. He is in A. T. Stewart's Paris house.
74 Q. Connected with Mr. Kingman?
A. Yes, sir.
Q. Did you ever know these gloves to be offered at that price before?
A. They were never offered to me before.
Q. Did you ever know of their being offered to anybody before?
A. I have heard that they have been.
Q. Before this season?
A. It was last fall some time.
Q. To whom did you hear they were so offered?
A. I understood they were offered to every one that wished to purchase.
Q. Did you ever know the Alexandre glove to be offered in the Paris market at all for sale prior to last fall?
A. I don't know anything about that.
Q. How long have you been engaged in the glove business?
A. About ten years.
Q. Have you been frequently to Paris?
A. Yes, sir.

By Mr. HALSTED:

Q. Do you buy the Tréfousse glove in Paris?
A. No, sir.
75 Q. You buy them here?
A. Yes, sir; buy them here.
Q. You never imported any gloves?
A. No, sir.

By Mr. CLAFLIN:

Q. You always buy them here?
A. Always buy them here, these kid gloves. We have imported some kid gloves from Grenoble, a number of years ago.

Q. None recently?
A. None recently; no, sir.

By Mr. HALSTEAD:

Q. Was the quantity limited that you could have bought of Mr. Kingman?
A. No, sir.
Q. You could have bought any quantity?
A. Any quantity.
Q. Then you did not buy the Trefousse glove in Paris, for the reason that you could do it here?
A. No; I had already placed my orders.
Q. You say you had already placed your orders in Paris before this proposition was made by Mr. Kingman?
A. No, not in Paris. We placed all our orders here in New York.

By Mr. CLAFLIN:

76 Q. Did you try any other maker as to the price of gloves?
A. No, sir.
Q. Have you ever tried within five years?
A. No, sir.

By Mr. HALSTED:

Q. Your visit to Paris, then, was not for the purchase of gloves only?
A. For the general line of merchandise that I buy.

PLAINTIFFS' COUNSEL. We now offer in evidence the record of the testimony of A. K. P. Cooper.

The COURT. This testimony delivered at the same time?

Mr. TREMAIN. No, sir; but his testimony delivered upon the same reappraisement in question before the general appraiser and the merchant appraiser. This tends to show what evidence the appraising officers had before them of the cost of manufacture and the price in Paris of the goods under appraisement at or about the time of exportation. The evidence thus offered tends also to show the want of power to make the ap-
77 praisement protested against, and in other respects to sustain the protests.

DEFENDANT'S COUNSEL. Does the gentleman, by the words, "in other respects" mean to intimate that there was any fraud upon the part of the appraising officers? For the Government counsel frankly admit that if an appraiser be guilty of fraud his action is reviewable before the court and by the jury.

Mr. TREMAIN. We take that admission and go to the jury on that subject. It practically withdraws this ruling.

The COURT. No, it does not either; he asks you a question; you have not answered it yet.

Mr. TREMAIN. Our testimony when received will show that which amounts to a fraud unquestionably, or we cannot under the present ruling of the court sustain this case or get a verdict; but for us to conclude at the outset what is or what is not fraud, is a question I am not compelled to answer.

The DISTRICT ATTORNEY. I object to it.

The COURT. Ruled out.

(The evidence was excluded.

78 Plaintiff's counsel then and there duly excepted to said ruling.)

The excluded record affected by this ruling is as follows:

79 A. K. P. COOPER, a witness, being duly sworn, testifies:

In the previous reappraisement I testified with the cost of the skins that our people took of them, all the way from 28 to 40 francs, and in establishing the cost of the glove I assumed to take the high price of 40 francs, because I was so certain of establishing the cost of the glove at a manufacturer's profit below the invoice price; I found that I had made an omission of an item of expense.

Then I qualified my testimony in the second case to the effect that I had ascertained from the Paris house what was a fair average for the cost of skins, and that was 35 francs, and upon the basis of 35 francs for the cost of the skins with all the items of expense added, including the ten per cent. profit of the manufacturer, we made the price of the glove about two per cent. less than the invoice prices (I am now talking about the

80 ladies' two-button), which we considered to be an ample margin to cover interest, rent, expense, superintendence, and some other items which the collector in his letter, addressed to the press, stated was not included. Since that date I have received definite information from Paris, in regard to what the cost of the skins has been in 1878, and up to that time of writing the average cost for skins which had been bought this year was 32 francs and one-fifth, within a mere fraction. That is all I wish to say in regard to the price of skins.

By Mr. MCCOOK:

Q. How late was that information?

A. It was dated some time in the month of September.

81 A. K. P. COOPER, being duly sworn, testifies as follows:

By the GENERAL APPRAISER:

Q. You represent the importers?

A. I do. This statement that I have here is an actual calculation, based upon the cost of one case of these gloves which are now under consideration. I take the amount of the invoice as it appears, take off the discount, and add the packing charges.

Q. Which invoice is that?

A. Case 483. The amount is 11,844 francs.

Q. 282 dozen?

A. 282 dozen, at 42 francs—11,844 francs. Discount, 6 per cent., and packing charges. That is as far as the invoice goes. To that I add shipping charges at Havre.

Q. What are the charges?

A. Transportation to Havre and shipping charges there, 21.40 francs, as appears by our bulletin, which corresponds with the custom-house entry. That makes the amount of francs that we have got to remit to the other side to meet this invoice, 11,179.75. That is converted into dol-

82 lars, at 5.15, which I always take as the par value of exchange in estimating the cost of foreign goods. I insure them at one per

cent., the freight is added, and then the duties, as we have actually paid them into the custom-house, which is 50 per cent., $2,222, making the cost of that case of goods $3,311.20; that, divided by the gross francs, gives 28 cents net.

Q. As the cost of landing?

A. Yes, sir; that is an exact calculation.

Q. You are the lowest calculator on that?

A. The question has come up in regard to the profit. I want to go back to the condition of matters as they stood in 1877, when the prices were reduced to 44 francs, which, at 28 cents, is equal to $12.32. We made the selling price at that time $18 per dozen. Our trade discount at that time was 7½ per cent., which, deducted from that, leaves $16.65. Take off a cash discount of 6 per cent., that is, one dollar, that
83 leaves $15.65. I then deduct the average depreciation on *on* stock, 6 per cent. = 94 cents; that leaves $14.71. The interest for carrying the stock, 3 per cent. = 44 cents; that leaves $14.27. The premium on gold at that time was 5 per cent. Taking that off, leaves $13.59. The ordinary commission for selling goods in New York is 10 per cent. If I take that off it leaves $12.23, which is just 9 cents different from the actual landed cost, as I have established. That is as it stood in 1877.

Q. Let me ask you here whether all this calculation is not upon the basis that those importations were wholly of the two-button gloves?

A. I have only made a calculation on the two-button gloves. I merely give you that in August, 1877, when we established our price at $18. To bring it down as it stands on importation to-day our price to-day is $18; the trade discount is ten per cent.; and, following it through the same as I have here, it gives the manufacturer $12.50 against the invoice price of 42 francs, at 28 cents net, costing $11.76, which yields him a profit
84 of 6.3 per cent. Now, when we reduced the prices in August, 1877, from that time up to this we have seen no occasion to make any reduction in the dollar price. That is why at this particular time it shows a little larger than a fair profit, when, at that time, owing to the premium on gold, it showed no *premium* whatever to consign these goods here at the invoice prices at that date.

(The three statements produced by the witness are put in evidence, and marked "Exhibits 2, 3, and 4.")

By Mr. HALSTED:

Q. What did you make the general result in January, 1879, at the present selling price? What is the net profit?

A. 6⅔ per cent. I merely wish to repeat here—perhaps you have not seen it—the testimony that I gave previously in regard to the skins. I gave the information, as furnished by our manufacturers, of the average cost of the skins for each year. The whole average in 1875 was 50
85 francs a dozen; in 1876 it was 42 francs; in 1877 it was 33 francs; and 1878, up to the time of their writing, which was some time in September, they had only bought a very few skins, less than 10,000 dozen, and the average cost was 32⅕ francs. This memorandum, which I gave to Mr. Claflin, is a repetition of my testimony on a previous occasion, based upon the fact of raw skins costing on an average 35 francs, and since that they have made it out a little less. The cost of the gloves, including 10 per cent. profit, was $38.65, which were invoiced at $42, less 6 per cent.

Q. In that estimate of the cost of skins, of course you are estimating for the depreciation for the seconds, and so on, that are thrown out?

A. That which I have given is the average cost of the skins.

Q. Without reference to throwing out?

A. Yes, sir.

Q. Then your cost of skins would be enhanced of which the first quality of gloves are made. Mr. Ancello estimates 30 francs as the cost
86 price, but he adds 10 per cent. for seconds and makes them cost 33.

A. I take it in the price they gave me that is included. They say 32½ is the average cost of the skins up to this day. There is a difference between 32 and 35 francs in that calculation.

By the GENERAL APPRAISER:

Q. Was that for all the skins purchased by Fortin & Co.?

A. 32½ francs, yes, sir; there is the quantity of skins that they have bought each year, and the number of francs they paid for them. In is that testimony that I gave the other day. That average that I gave is within a fraction of theirs.

Q. Your Napoleon gloves came in at a low figure?

A. We had but a very few of them this last year.

Q. In 1877 you had a great many, and all through 1878 you had them?

A. Very few in comparison with the total importation.

Q. But you had them. They were invoiced at about 30 francs I believe?

A. 32, yes, sir; I don't think the Napoleon gloves are 10 per cent. of the whole lot.

87 Q. I understand this is a theoretical statement of yours?

A. No, sir.

Q. It is not taken from your books as what was actually realized from any quantity of gloves, is it?

A. In what respect is it theoretical?

Q. You are taking here a theoretical case of a certain quantity of two button gloves, are you not?

A. It is one entire case, as if they were all sold on those terms.

Q. You are taking this case now under consideration and applying it to 1877?

A. Yes, sir.

Mr. LIBBEY:

Q. Have you got a memorandum based on 52 francs?

The WITNESS. Yes.

Mr. LIBBEY. I would like to have that read also.

The WITNESS. If the goods were worth 52 francs, and were invoiced at 42 francs, they would cost exactly $13.59 a dozen to land.

The GENERAL APPRAISER. And what they do cost is how much, according to your theory?

88 The WITNESS. $11.76, and we realize upon them by this rule only about $12.50.

Mr. LIBBEY. It shows that at 52 francs would be selling to-day at a positive loss, and we would not get our money back.

The GENERAL APPRAISER. Do you mean to say the average depreciation on your stock is 6 per cent.?

The WITNESS. Yes; it is based upon actual figures, and an examination of the two years' business.

Mr. LIBBEY. 52 francs would close up every manufacturer of kid gloves that sends his goods to this country on the present market price, $18 per dozen.

The GENERAL APPRAISER. It seems to me so remarkable that Mr. Fortin's expenditures for skins in 1877 should be so far below those of other houses. Mr. McCreery came here and gave us all his purchases of the Widow Jouvin Society for that year, and another gentleman came here and gave us their entire purchases.

89 The WITNESS. I explained all that in my testimony.

The GEN'L APPRAISER. It was an average of about 40 francs.

The WITNESS. These figures they have given us as the aggregate cost.

The GEN'L APPRAISER. I understand those figures were contained in letters that were sent to your house?

The WITNESS. Yes, sir; private letters.

The GEN'L APPRAISER. Not under oath, of course. I don't care to speak of it except as counsel happened to have spoken of it in another connection. Those statements were not under oath, of course.

By Mr. HALSTED:

Q. You make them under oath to the best of your knowledge and belief?

A. Yes, sir; and I accept them as being absolutely correct.

Q. What do you say a dozen gloves invoiced to-day at 50 francs would cost?

A. If they were worth 52, and invoiced at 42, and paid a duty on 42, they would cost $13.59. If they were worth 52, and invoiced at

90 52 francs, they would then cost, calling a franc 28 cents, net $14.56. But assuming that they are worth in Paris 52 francs, and the manufacturer had underinvoiced them at 42, they would then cost landed $13.59 net.

Q. But if worth 52, and invoiced at 52, they would cost how much?

A. $14.56.

Q. Your long price is 18, less 10 less 6 for cash?

A. Yes, sir.

Q. Six per cent. for depreciation, three per cent. for interest?

A. And carrying the stock.

Q. That reduces it down to what, I don't know as you have got it upon that basis?

A. Yes, I have; it reduces it down to $13.89. Then take off the commission for selling.

Q. In the statement made by Fortin & Co., of which I believe you furnished the evidence, they go on to make up the cost of skins 22.86, 22 pair to the dozen; and dyeing, cutting, and so on; and we come

91 down to the item of 35.36. Then there is an insertion for dressing the skins which you omitted of 3.70. It is all in that tabular statement. Is that accepted as true by you?

A. No, sir; I think that is qualified by my testimony here later.

The GEN'L APPRAISER. He explained all that in his later testimony. He changed what he called the cost of the skins in the hair from 40 francs to another figure.

Mr. HALSTED. In other words, 22.86 represented in your statement the cost of tanning and dressing?

Mr. LIBBEY. Let me explain that. When we were first called upon for facts, &c., not understanding what information would be necessary, many of those things were lumped under one head, instead of being in detail, as we got it afterwards from the manufacturer, and we could not give it in so clear a way, and the first statement of Mr. Cooper embraced a confusion of that sort, which was afterwards explained by correspondence.

92 The WITNESS. I stated in substance that we had bought skins for from 30 to 40 francs. I was certain of establishing the value of the goods at a price less than the invoice price, admitting that we had taken the price of the skins at the maximum cost of 40 francs. Then I found that I had omitted tanning, because my information came by telegraphic dispatch, and it was not very clear, and when I subsequently corrected that, when they furnished me at my request what would be a fair average to take the skins at, my answer was 35 francs, with the additional information. Then they establish the cost of gloves with 10 per cent. profit, which would be 38.65.

Mr. HALSTED. But you do estimate the cost, of course. The 22.86—does that include the cost of dressing and tanning?

The WITNESS. No, sir; not on the basis of 40 francs.

Mr. HALSTED. Then they cost 40 francs for the dozen, and you allow for rejected and seconds. You make the net cost 39.06. Do you accept that?

93 The WITNESS. I modified that statement, because when I made that I accepted Mr. Clark's figures of 21 pair for a dozen skins, but Fortin informed me that a dozen skins cut 22 pair, and taking the average of raw skins at 35 francs, cutting 22 pair.

Mr. HALSTED. I believe that is the view of all now that 21 to 22 is a fair amount?

The GEN'L APPRAISER. Yes. His former testimony was from 19 to 23. The examination was very full before these reappraisements came on in other cases.

Mr. HALSTED. I should think it would be better to give the importer the advantage of the largest estimate, if 22 is the basis.

The GEN'L APPRAISER. I don't think 22 is. It might be 21½.

The WITNESS. Those item' of dyeing, cutting, sewing, &c., are all correct?

Mr. HALSTED. And also splits and tears and "thread stitching and hitching" and so on?

94 The WITNESS. I presume those items are included by Fortin in what they call finishing. They give me 120 francs in the block—put it all in.

Mr. HALSTED. But the item 22.86 you are not quite satisfied about?

The WITNESS. That is based upon 40 francs and 21 pairs.

Mr. HALSTED. Without any cost of tanning, dressing, and so on?

The WITNESS. Yes; but I modified that, as I told you, by making the raw skins 35 francs, adding 6½ for tanning and dividing by 22 pair.

Mr. HALSTED. In a capricious article like kid gloves, which is subject to 6 per cent. deterioration in a year, do you consider 10 per cent. a fair manufacturer's profit?

The WITNESS. Yes.

Mr. HALSTED. That would be satisfactory to the manufacturer?

The WITNESS. I should think it would be a large profit.

Mr. HALSTED. Then 10 per cent. being a satisfactory profit, you show upon a basis of 42 francs to-day a still further profit of six
95 per cent.?

The WITNESS. Just at this particular time; yes.

Mr. LIBBEY. There is one item that is not in there—the item of charges for selling the goods. The commission houses in this country charge 10 per cent. for selling goods, which has not been taken into consideration.

Mr. CLAFLIN. Yes; but you are the commission house, aren't you?

Mr. LIBBEY. I know we are.

Mr. CLAFLIN. Therefore that should not be included?

Mr. LIBBEY. We should not want to do business for nothing.

Mr. HALSTED. You charge ten per cent. for selling?

Mr. LIBBEY. That is the trade discount.

The WITNESS. I assume that we are a commission house and we get ten per cent. commission.

Mr. HALSTED. I think it should be put in; but I don't think, with a capricious article when the vicissitudes of trade are so great, that
96 six per cent. would be a very large profit. For instance, suppose that six months hence skins advanced from the lowest point they have been known to be for a great many years and run up to a price beyond 40 francs, could you increase your price here?

Mr. LIBBEY. Certainly.

Mr. HALSTED. You would be able to get the advance?

Mr. LIBBEY. Certainly.

Mr. HALSTED. How long has this price of $18 less the trade discounts been in existence here?

The WITNESS. Ever since August, 1877. The price was made $18 at that time, but in the mean time the trade discounts have slightly varied from 7½ to 10.

Mr. CLAFLIN. Is that the uniform discount? Do you give that to everybody?

Mr. LIBBEY. No; we give that to large buyers—if a house like yours come in and give an order, or any other large jobbing-house.

The GEN'L APPRAISER. That is another point that is of some consequence as connected with the theoretical idea of this case. In
97 making the estimate there you have used the extreme discount that you only give to the largest purchasers. Now, it has been shown heretofore on former reappraisements that there is an average discount which is considerably less.

The WITNESS. Yes, we expect to make a little profit in doing business.

Mr. LIBBEY. But we offer that to everybody who will buy 200 dozen.

The GEN'L APPRAISER. My point is simply this: that this statement, after all, is theoretical, and is not taken from the actual transactions of your house during the year 1877.

The WITNESS. I beg your pardon; I claim that it is actual.

Mr. LIBBEY. From your standpoint it is theoretical; but we prove that that theoretical statement is right from the profits on the entire business made up from our books, and in lieu of a commission, which

98 we divide with Fortin, and I was surprised to see how near it came to that statement. The profits that we declared were 5⅛ per cent. The profit in this theoretical form is 6½.

The GEN'L APPRAISER. General, are you through on behalf of the importers?

Mr. MCCOOK. Yes, sir; we are through.

The GEN'L APPRAISER. The case, then, is closed.

Mr. MCCOOK. Definitely closed.

The GEN'L APPRAISER. All right, sir.

Testimony closed.

99 PLAINTIFFS' COUNSEL. We now offer the record of the testimony of Mr. James McCreery, taken before the appraising officers, as tending to show the price at which he bought the goods in question—other goods identical with the goods in question—in Paris at or about the time of the exportation. It is offered as tending to show that the customs officers had before them the evidence of that witness' purchase of goods, identical with those in question, at or about the time of the importation in question.

The defendant's counsel objected.

Mr. TREMAIN. I suppose in this case there is no objection as to the sufficiency of the proof of the stenographer's minutes?

DEFENDANT'S COUNSEL. No.

The COURT. Ruled out.

(Plaintiffs' counsel then and there duly excepted to said ruling.)

The excluded record affected by said ruling is as follows:

100 JAMES MCCREERY, being duly sworn, testified as follows:

By the GENERAL APPRAISER:

Q. You are of the house of James McCreery & Co.?

A. Yes, sir.

Q. And you have imported heretofore the Widow Jouvin glove, known as such, I believe?

A. Yes, sir.

Q. I understand you do not consider yourself an expert in gloves, and do not feel qualified to make a comparison between gloves that are exhibited to you?

A. That is so.

Q. You made a contract recently with a gentleman by the name of Jay, in Grenoble, I believe?

A. In Grenoble and Paris. He manufactures in Grenoble and has a place for sale in Paris.

Q. And these gloves which we have here with white welts I understand to be samples of the gloves which you have contracted for with him?

A. Yes, sir.

Q. And these gloves are taken from a sample lot of 25 dozen
101 that were received here a few weeks ago?

A. Yes, sir.

Q. They were invoiced at 42 francs, and were advanced to what price?

A. 49.

Q. And you appealed. Have they been reappraised yet?

A. They have not been reappraised. I asked for delay that I might get testimony.

Q. I suppose that the importers here would like to know the terms of your contract with Mr. Jay. Will you please tell us who Mr. Jay is?

A. Mr. Jay, with whom I had the transaction, was formerly an employée in the house of the widow Jouvin, in Grenoble, and more recently in their sales-house in Paris—their retail house in Paris. His father, according to his statement, is the manufacturer of these gloves. He and his father are in partnership. I did not see the father, but he represented to me that his father was for twenty years engaged in the house of
102 the widow Jouvin as a cutter and as foreman, and that they were capable of manufacturing a glove quite equal to hers. I did not seek him out; he sought me out, and proposed to make me gloves that would be equal to hers at a less price. He showed me samples. I didn't think those samples were equal to hers, although equal in point of cutting and sewing.

By Mr. CLAFLIN:

Q. That is, equal to the Jouvin gloves?

A. Yes, sir; the gloves that he showed me. These gloves were 39 francs. Those gloves, I thought, while unexceptional in point of cutting and sewing and workmanship, that the skins were not so fine, and then I entered into negotiations with him to make me a finer quality of gloves at the price of forty-two francs for two buttons, and when we had established that price, I asked him, "Well, 42 francs being the price of two buttons, what will be the price of three buttons?" He said, "The usual
103 difference of three francs." We also discussed the matter of discount. The discount of eight per cent. and one per cent. was agreed upon. And then I asked him, in order to prevent any discussion hereafter, to embody these matters in a letter, which he wrote to me, and which is in the possession of the Department. That letter was offered on a former occasion, and you have it.

By Mr. HALSTED:

Q. You made this contract yourself, did you?

A. Yes, sir; I made it myself.

Q. What did you understand to be the price of the Widow Jouvin gloves?

A. The Widow Jouvin glove was consigned to me at just these prices.

Q. 42 francs?

A. Yes, sir, 42 francs, with a rising of three francs.

Q. For the best glove?

A. Her best glove does not come here at all. Her best glove she will only sell at retail in Paris, what she calls her quality unique. The gloves that come to America are not her best.

104 Q. Is that so with a great majority of gloves?

A. I don't know.

Q. You simply know with regard to the Jouvin glove, without reference to other manufacturers. You did not approach any other manufacturer?

A. No, I did not.

By the GEN'L APPRAISER:

Q. The price of that quality, the unique, is 68 francs, is it not, for the two buttons?

A. I really don't know; I never discussed with them their Paris price.

By Mr. CLAFLIN:

Q. You never tried to buy the Jouvin gloves yourself in large quantities?

A. Yes, I have tried to buy them.

Q. How low did you ever find you could buy them?

A. I have bought at 42 francs for two buttons.

Q. The Jouvin glove?

A. Yes, sir.

By Mr. HALSTED:

Q. Do you consider it as good a glove as the Trefousse?

A. I do not consider myself sufficiently an expert to enter into comparisons of qualities.

Mr. MCCOOK. It is admitted by all the manufacturers that these
105 are all of a similar grade—the Trefousse, Jouvin, and the Courvoisier, &c.

By Mr. CLAFLIN:

Q. When did you buy these at 42?

A. I was going to explain to Mr. Halsted that I have discovered since these reappraisements have come on that I don't know nearly so much about kid gloves as I thought I did.

Q. When did you make your purchase of the Jouvin gloves?

A. Quite recently.

Q. Within a month or two?

A. Yes, sir; within that time; quite recently.

By Mr. HALSTED:

Q. You were satisfied that Madame Jouvin was good enough for you; therefore you sought no other manufacturer at all; or was it from your business relations?

A. No; it would hardly be fair to say that. The widow Jouvin and I have entered into an arrangement by which their gloves come exclusively to us, and we bound ourselves not to take any other glove. That lasted for a certain time, but she wished to have a larger
106 outlet, and she made an arrangement with Murphy and Grant, of San Francisco, that they should be the agents west of the Rocky Mountains and we should be the agents east of the Rocky Mountains, and that agreement still continued that we should not take any other glove above a certain price. We had the liberty of taking low-priced gloves, but not other first-class gloves. But this arrangement has terminated.

Q. By the fact of your having made this purchase?

A. When this reappraisement commenced I found that I had not time to spend down here, and it would be better for me to employ my capital in some other way than going around in the kid-glove business if I was to be called upon to debate every entry that I made; and so when I was

over there last summer I gave them their liberty, that they might seek any other house if they wished, and I had my liberty to buy any
107 other glove if I wanted it; and so this Jay presenting himself, under these circumstances I felt myself at liberty to make the contract with him that I did. I took only 25 dozen in samples to start with, and when I saw those samples they pleased me sufficiently well, and above all they pleased my glove man, who is an expert. I consider him an expert, at any rate. He was so well pleased that I telegraphed to the house of Kampman & Co. that I would take 500 dozen at the price and discount of case 1108, which I believe these are. I also added to that dispatch, "Confining his make to us, calculate to use 2,000 dozen yearly;" words to that effect; and I got a dispatch from Kampman & Co., "say accept, confining his make to you;" and I gave him an order for five hundred and some odd dozen.

Q. They agreed to it?

A. Yes, sir; to make them as quick as he could.

108 Q. You have bought Jouvin gloves within a period of two months at 42 francs?

A. Yes, sir.

Q. Previous to that what had you paid?

A. They were consigned to me previous to that.

By Mr. CLAFLIN:

Q. But this was a purchase outright?

A. Yes, sir.

Q. You bought and paid for them at that price?

A. I have not paid for them yet.

Q. You expect to?

A. The order is placed at 42 francs for the two buttons, ladies'; 45 francs for three buttons; 48 francs for four buttons; and we do not get five buttons or six buttons, and I cannot tell you what the price is.

Q. But when you made this purchase the gloves were not to be confined to you; they did not confine them to you; he was at liberty to sell them to other people?

A. They are not positively confined to me at present.

109 Q. Then I could go there and buy a thousand dozen if I had the money?

A. I don't know a single thing about that; I have not asked that question; I have not raised it; I would be sorry if you did, because then I should be obliged to give them up perhaps.

By Mr. HALSTED:

Q. What were the Madame Jouvin gloves invoiced to you at previous to this last purchase at 42 francs?

A. They were invoiced at just the price I have stated.

Q. You did not state. You made a purchase within sixty days at 42 francs?

A. Within less than sixty days.

Q. They have not come here yet?

A. No; they have not come yet.

Q. What did Madame Jouvin consign to you at previously?

A. 42 francs for the two buttons, 45 for the three buttons, and 48.

Q. How long has that been continuing?

A. That has been continuing all along; she was the last, I believe, of the first-class makers to reduce her price to 42.

110 Q. What was her previous price?

A. 44.

Q. And then before that?

A. 46, as well as I can remember.

Q. What has been the highest price they have been consigned to you?

A. 52, I think.

By Mr. CLAFLIN:

Q. Then you were at liberty to remit for these gloves less your commission, were you not; these that she consigned?

A. Yes, sir.

Q. How much was that?

A. My commission was 10 per cent.

By Mr. HALSTED:

Q. Less six per cent.?

A. Less eight per cent. and one per cent., which is the discount at Grenoble, which we have established; that is the usual discount at Grenoble.

By Mr. CLAFLIN:

Q. Then you could remit at ten per cent. less than that?

A. I made advances.

Q. But when the account is closed up you collect your commission less ten per cent.?

111 A. Yes, sir; I deducted my commission and deducted discount, and whatever the allowances were; sometimes we had to allow an extra discount.

Q. Then she really got for these gloves 42 francs and ten per cent. off, which would be about 38?

Mr. HALSTED. No; she has nine per cent. off.

Mr. CLAFLIN. The nine per cent. is to go off besides that, it is true.

The WITNESS. No; that is a mistake, Mr. Claflin; she got the price at which we sold them less the discount that I allowed, and then my commission upon the net amount received.

By Mr. HALSTED:

Q. Upon the selling price here?

A. The selling price here.

Q. Not upon the cost invoice price?

A. The selling price here.

Q. Your sole interest was ten per cent.?

A. My interest was ten per cent.; my sole interest; and I

112 never received more; on an average I received less.

Q. That is upon your wholesale prices?

A. Yes, sir.

Q. Of course it does not regulate your retail?

A. No, sir.

Q. Is there a Jouvin and a widow Jouvin?

A. Yes, sir.

The GEN'L APPRAISER. There is a Jouvin & Co., and there is a widow Jouvin.

Mr. HALSTED. She is an existing person; she really exists.

The GEN'L APPRAISER. I am not certain as to that.

The WITNESS. At the last time that I was at Grenoble she was alive, a few weeks ago. I am sure if she were dead the survivors of the firm would let me know, but she is still very actively engaged herself in her factory.

By the GEN'L APPRAISER:

Q. We understand you that you have always made returns to
113 the Widow Jouvin Society according to the prices at which you have sold your goods here?

A. Yes, sir; sometimes I have returned more than I received here, for the reason that I did not wish to lose the account.

Q. I was just going to refer to that, as you have stated that you thought you had made returns to the society beyond what you have been represented by the invoices.

A. Undoubtedly on an average of the transactions I returned her a profit.

By Mr. CLAFLIN:

Q. I notice that in the evidence before given you say that you returned them at more.

A. Yes, sir; I could not say how much; I never made the calculation. My mind is clear that we have returned a profit on an average of the transactions.

By the GENERAL APPRAISER:

Q. This recent purchase to which you have referred from the society, how recent is that?

A. I am a poor hand to remember dates.

Q. Within two months?

114 A. Oh, yes; it is within less than two months.

Q. The glove that is coming to you, is it to be stamped on the inside with the Widow Jouvin mark, &c.?

A. I so understand it.

By Mr. CLAFLIN:

Q. Will you sell it as that glove or under a distinctive mark?

A. No; I understand it will be precisely the same glove we have been receiving.

By the GEN'L APPRAISER:

Q. Is it to be stamped?

A. To be stamped; that is my understanding. If they understand it differently and send it without a stamp, I should consider it a breach of the contract.

Q. What is the quantity you purchased?

A. I have purchased over 600 dozen.

Q. Was that the last purchase that you made?

A. That purchase I have made since I found that there was little chance of this question of values at the custom house being determined suffi-

115 ciently near to save me from trouble, and I declined to receive any further consignments from the Widow Jouvin until this matter is settled, except some special orders that she still has to deliver.

Q. Does this lot cover the special orders?

A. It does not cover anything for which she has orders prior to the time that I made the offer.

Q. Do these transactions, then, close up the account with the society?

A. Until it is renewed; that closes up the account for the present.

By Mr. CLAFLIN:

Q. She has no agent here, then, now?

A. No, sir.

Q. She is quite at liberty to sell her goods to anybody?

She is quite at liberty to sell her goods outside of New York, not in it. I ought to have stated that to you a few minutes ago. My understanding is that as long as I take her gloves I am alone to have them in New York.

Q. I understood you to say before that that was not so; that I
116 was at liberty to go and buy, but you would be sorry to have me go.

A. There is no written engagement; I forgot about that at the moment you asked me before.

Q. So that you do not think I could go and buy these gloves?

A. I don't know. My understanding would be that she is to confine them to me at present.

By Mr. HALSTED:

Q. Still you have waived the conditions of the contract?

A. There is no existing contract now confirming them to me for the United States east of the Rocky Mountains. That is all; there is none at present.

Q. You speak of these new gloves coming; they are made by this new manufacturer, Jay?

A. Yes, sir.

Q. Are they to be stamped?

A. They are coming unstamped. There is only one change to be made in the gloves from what you see them.

Q. The Widow Jouvin's gloves are made in Grenoble.

A. So are these.

Q. Are they the same quality that are sold in the Paris market?
117 No; the gloves that come out here are not the same quality.

Q. But they are all made in Grenoble?

A. They are all made in Grenoble.

Q. I supposed the Grenoble gloves were an inferior glove, as a rule?

A. No; they can make just as good in Grenoble as can be made anywhere. There are all kinds of gloves made in Grenoble.

By the GENERAL APPRAISER:

Q. I want to ask you whether this low price of 42 francs, at which you say you purchased these gloves, was not in some respect a concession to you for some reason or other that has not been stated here?

A. That I cannot tell.

Q. Were these gloves to be purchased outright and paid for in cash?

A. Those gloves are to be paid for in cash.

Q. According to the prices on the invoice?

A. According to the prices on the invoices, plus the packing
118 charges, the usual charges—that is, such charges as are counted at the custom-house to pay duty upon.

Q. Has he agreed to sell you any gloves beyond that lot that you have referred to at the price of 42 francs?

A. I have not proposed any further purchases from her to which I could have an answer.

Mr. CLAFLIN. I was in hopes that you could have told us whether this was really a fixed price for the goods, whether you and I and anybody could go and buy these gloves, whether it was a current price of the gloves now or whether something else was. It seems to me that is about the question here—what are the gloves worth there?

The WITNESS. Mr. Claflin, I will ask you a question in return. Suppose you bought a big lot of Middlesex or Washington mills woolens, what would be the market value of it? Would it be the price you bought them at or would it be the price you asked for them?

119 Mr. CLAFLIN. I do not consider that that enters into this, because there is no duty on those, and these gloves are to be invoiced at what is considered a fair market price over there.

The WITNESS. I have yet to find that the market price of an article is higher than the price you can buy it for. I have never found it to be so anywhere. I always look upon it that the prices at which I buy goods are the market prices.

Mr. CLAFLIN. It is the presumption, then, that what you could buy them at in a large lot somebody else could buy them about as cheap if they bought an equal quantity or larger. Isn't that fair; isn't that the presumption? Suppose I bought a thousand boxes, and supposing Mr. McCreery went there and bought 5,000 boxes, he would be able to buy them just about as cheap as I did if they had the goods, wouldn't he?

The WITNESS. I could illustrate the difficulty of arriving at the
120 market value for any given article by stating to you that a few weeks ago the plaid goods made by the Washington mills were sold by E. R. Mudge, Sawyer & Co., at $1.50, with five per cent. trade discount on the usual discount for cash. A little bit more recently we bought those goods at $1.25 without any trade discount, but only the usual discount for cash; and a few days ago we cleaned them all out of what they had for $1.10, with the usual discount for cash. Now, I hold that the prices at which we bought those goods are the market value of them as far as we know anything about it. If we had been importing these goods from a foreign market instead of buying them at our own we would have entered them at the custom-house at precisely the price we paid on each of these days, and we would have considered that in each case we were
121 entering them at the market value. Now let some man else go into the market to-day when we hold the whole of them and the price to-day would be the job price at which we sell them. That would be the market price to-day.

Mr. CLAFLIN. There is this difference. The style of dress goods that we sell to-day may be 20 per cent. less next week, or they may be 40. You and I have seen that frequently.

The WITNESS. Yes, sir.

Mr. CLAFLIN. But we don't find it so in these staple gloves that go along from year to year and are always the same.

The WITNESS. I beg your pardon.

Mr. CLAFLIN. I have not seen it so.

The WITNESS. I know—not of my own knowledge, but it was current report in Paris, which the salesmen of the widow Jouvin and Mr. Dupin did not deny—it was a current report that the widow Jouvin had made a sale to a South American house of her first quality of gloves out
122 of stock at 42 francs for two buttons and 45 francs for three buttons.

Mr. CLAFLIN. But those did not come to the States at all.

The WITNESS. No, sir.

By Mr. HALSTED:

Q. Mr. Claflin means if you were disembarrassed of any contract with Madame Jouvin so that the market was open to any one approaching or buying of her, could he, Mr. Claflin, buy his quantity of gloves, if it was a fair quantity, at an equal price with yours?

A. I don't know.

Q. What would be your impression?

A. It would be impossible for me to tell what Mr. Claflin could do.

Q. What would be your impression as a merchant? You have disconnected yourself now from Jouvin entirely. You are no longer to use their goods?

A. I don't know that yet. I am at liberty to take both. I am perfectly free to take both.

123 Q. I am now taking a suppositi'ous case. If you were entirely disembarrassed from any connection with Madame Jouvin, could any other merchant of equal reputation and standing as yourself, and using equal quantities, buy at as good advantage?

A. I have not the slightest doubt but what they could.

By Mr. CLAFLIN:

Q. Could buy these goods at the same price?

A. Buy them at the same price.

Q. That is these very gloves; this make?

A. Yes, sir; I have not the slightest doubt about it.

By the GEN'L APPRAISER:

Q. You do not know of any one having done it, do you?

A. I do not.

By Mr. MCCOOK:

Q. Except yourself?

A. Except myself.

By Mr. CLAFLIN:

Q. But you think I could go there to-morrow, or telegraph my man to buy 1,000 dozen in the same way?

A. I doubt that.

Q. You think not?

124 A. No; if you were placed in Chicago, I have no doubt of it.

I hardly think Madame Jouvin would like to run the risk of breaking off connection with me. We have been connected a good while.

Q. If I were connected with a house in Boston or Chicago or some other place you think she would do it?

A. I do.

By the GEN'L APPRAISER:

Q. This purports to be a copy of your letter; I do not happen to turn to it now among the exhibits. I read from the importer's stenographic report (reading the letter on pages 84 and 85 of the volume marked "B;)" that is the letter is it, or a copy of it?

A. That is a translation of the letter.

By Mr. CLAFLIN:

Q. You said you paid for these goods a higher price than they have been invoiced. How much do you suppose it would average?

A. I did not pay for them.

Q. But you have remitted. I mean when these were consigned to you.

A. These gloves belonged to the consignor, and I returned the
125 net proceeds of the sales less my commission and the disbursements that I made. Usually they paid all the charges up to the time the goods were on board, and made their own insurance on that side. I deducted the freight and the custom-house charges here, and cartage to the store, and my commission.

Q. That is, you gave her the price you got for them here, whether that covered just the invoice or more or less?

A. That I have nothing whatever to do with, the profit.

Q. You returned whatever you got for them?

A. Whatever I got for them. When I made exceptional bad sales I sometimes charged no commission.

By Mr. HALSTED.

Q. Those bad sales were from what cause?

A. Many of them from the change of demand from one button to a greater number of buttons. Some of them from the closing out of
126 end of consignments, and some of them from the taste in colors having changed. No one can tell that better than Mr. Claflin or yourself. There are always things of that kind that must be taken into account. When I imported these gloves, when these gloves come here that I have bought, I shall take into account all these contingencies as something that I have to guarantee myself against, by charging a good profit. Those that deal in kid gloves know they are a very perishable article, liable to get spotted the fashion in colors is liable to be changed; the fashion in the number of buttons liable to be changed, and also if ladies get gloves that tear or rip, or they are dissatisfied with them in some way, you will have trouble, and all these things have to be taken into account on the price charged.

Q. There is another question that perhaps has no direct bearing, but you now speak of making returns from your wholesale price. Does
127 your wholesale price conform with the price of the best gloves in the market?

A. Did you hold it up to the standard

A. I held it up to the standard, but I always gave concession to large buyers—extra discount.

By Mr CLAFLIN:

Q. The price is $18.00 a dozen I understand, all over the market?

A. That is the nominal price.

By Mr. HALSTEAD:

Q. 18 less 10 less 6?

A. That is nearer to the prevailing price. I made a sale in September to Spaulding and Wales of something over 700 dozen of two-button gloves, first quality, the Widow Jouvin, bearing her stamp on each pair, at $10.00 a dozen, less three per cent., 90 days from the first of October.

Q. Those were some odd ends?

A. Those were all gloves that had paid the duty on the value of 42 francs, 44 francs, or 46 francs. Some of them had been in the store two years, and some of them a year, and none of them were of more
128 recent importation than last spring.

Q. They were simply unsaleable on that account?

A. But still that rubbed off the profit to the Widow Jouvin on a great many gloves, and upon that transaction I got no commission.

By Mr. CLAFLIN:

Q. You let her off lightly, in other words?

A. And I got no interest for my advances in that transaction.

By Mr. MCCOOK:

Q. You have recently purchased gloves from Jay, of which specimens are here; at what price?

A. At 42 francs for two buttons, and 45 francs for three buttons, ladie's.

Q. Have you given any additional order on those figures?

A. Yes, sir.

Q. What is the amount of that order?

A. About 500 dozen; I think it is slightly in excess of 500 dozen.

Q. The order was based on these samples?

A. Yes, sir.

Q. How many gloves have you purchased or ordered from the
129 Widow Jouvin within 90 days, her first quality of gloves, for the American market?

A. Over 600 dozen are positively placed.

Q. At what price?

A. At 42 francs for two buttons, ladies'; 45 francs for three buttons, ladies'; 48 francs for four buttons, ladies'; and there are some six buttons that I don't know the price of.

Q. And you know nothing to the contrary that any American merchant out of New York making an offer could get them at those terms?

A. I don't know anything to the contrary.

Q. And you believe that such a person of proper credit and standing could get them at that price?

A. I have not any doubt about it, but I could not say that I know, for I do not.

By Mr. CLAFLIN:

Q. Do you think so?

A. I think so.

Q. This new glove that you have imported, do you consider it as good a glove as this? (Referring to the Alexander glove.)

130 A. I should prefer to leave the question of comparative value to those who are more expert.

Q. That is all I ask you. I think you know better than I do. Is that as good a glove as that, in your judgment?

A. They are both very good gloves. This bears a very well known trade-mark.

Q. Aside from the trade-mark, suppose there were no trade-mark on either glove, which is the best glove in your opinion?

A. In my opinion the Alexander glove is the better of the two.

Q. Much better?

A. What would you call much?

Q. Three or four francs to the dozen.

A. I would give the preference to the Alexander glove; I would give the preference five per cent to the Alexander glove if I were buying the two gloves in the Paris market.

By Mr. MCCOOK:

Q. In giving your preference, and making that difference of

131 five per cent., wouldn't your judgment be affected by the brand of the Alexander glove?

A. Aside from the brand, if there were no brand on either glove, I would for this glove give five per cent. more than that. I would stick at that. I think that is as much difference as I would be justified in giving.

By Mr. HALSTED:

Q. The difference of value here would not represent anything?

A. It is the difference in value there, because that is really the question to be decided.

Q. You would be influenced by the expected price here, of course?

A. Yes, sir.

By Mr. CLAFLIN:

Q. Then why should you buy this glove at 42 if you can buy this at the same price and you think it is better?

A. Because I would be always overshadowed by the great house of Stewart, who are the agents of the Alexander glove.

132 Q. You would rather have a glove of your own?

A. Exactly; my poor 1,000 dozen would not make any show against their big stock. That would be as many as I would dare to buy of them, at any rate.

By Mr. MCCOOK:

Q. Do you take into consideration the difference in discount offered on these respective gloves when you speak about their value?

A. When I say five per cent., I mean five per cent. of the net value.

By Mr. CLAFLIN:

Q. No matter what the discounts are on either of them; if it is on one it is on the other.

A. No, the discount varies a great deal.

By the GEN'L APPRAISER:

Q. I have found your letter from Mr. Jay. That is the document, I believe (showing witness a letter).

A. That is the document; 54 for three buttons, that is evidently a mistake. So far as I know men's three buttons were not imported, but two buttons The young fancy fellows that wear three buttons wear ladies gloves usually; they have small hands.

133 PLAINTIFFS' COUNSEL. We now offer the record of the testimony of Alexander Morten, delivered before the appraising officers, he being a Government agent or employee, who testified of his visits to the first-class wholesale dealers and manufacturers in Paris at or about the time of the exportation, and of their offers to sell him similar goods at those invoice prices, and as tending to show that the appraising officers did not follow the evidence before them, but disregarded that and the law and Treasury regulations in reporting as they did.

(Objected to by the defendant's counsel.)

The COURT. Ruled out.

(To this ruling plaintiffs' counsel then and there duly excepted.)

The excluded record affected by this ruling is as follows:

134 ALEXANDER MORTEN, being duly sworn, testifies as follows:

The GENERAL APPRAISER. Gen'l McCook, will you repeat from your recollection the statement that you made a while ago respecting Mr. Morten, and the way he was treated by the warehouse company?

Mr. MCCOOK. Yes, sir; as it was reported to me. I objected to certain evidence that was put in as coming from certain firms and parties for a reason then given, and I stated that I believed it was inaccurate, because it had come to my ear that Mr. Morten, when he had called at the Fourth Street Warehousing Company in London for certain information in regard to silks and other goods, perhaps of gloves——

The GEN'L APPRAISER. Perhaps of gloves?

Mr. MCCOOK. I do not know; silks was the word I used, or other goods.

The GEN'L APPRAISER. That is not the way you said before.

135 Mr. MCCOOK. I don't pretend to be accurate about the mission, except that he called there and made these inquiries. They asked him, as it was reported to me, what he wished the information for, to which a reply was given that it was for the use of the custom service or custom bureau (or some such statement) of the United States Government, and that they replied that they didn't think they were called upon to furnish such information, and they declined to do it, and showed Mr. Morten the door. That is word for word as repeated to me.

By the GENERAL APPRAISER:

Q. Mr. Morten, you are the gentleman referred to?

A. I presume I am.

Q. You have seen Exhibit No. 1, which has been handed to you this forenoon, signed by Gen'l Starring?

A. This report; yes, sir.

Q. You are the Mr. Morten referred to in that report?
A. Yes, sir.
Q. By whom two affidavits were made, I think?
136 A. Yes, sir.
Q. Gen'l McCook has just made a statement, which you have heard. When you visited that warehouse company were you treated in the way that has been stated?
A. I was not. May I ask a question?
Q. Yes.
A. Does Gen'l McCook make that statement as it came to his ear, or does he make the statement, if it was not so reported to him, on his own authority? I ask for personal reasons.
Q. He simply says it was so reported to him.
A. I see you have said that the statement was not exactly accurate this time as regards what he said before.
Q. It was more about silks and other goods this time than it was at first. Before it was more directly applicable to gloves.
Mr. McCook. Well, perhaps gloves.
A. I simply ask for personal views, because I don't propose to have Gen'l McCook make any such statement about me, and of course,
137 whoever the statement came from, I only consider myself aggrieved as from the person from whom I hear them made. Do you understand?
Mr. McCook. Yes, sir; I understand it perfectly—entirely.
Q. This report which I have shown you, you recognize it?
A. I do.
Q. It contains certain statements, or alleged statements, as to what certain dealers in gloves in Europe said in reply to certain inquiries made of them with reference to prices?
A. It does.
Q. You are the gentleman who made the inquiries, I believe?
A. I did.
Q. Are you a short-hand writer?
A. I write short-hand. I am not a professional short-hand writer.
Q. Did you take down the conversation when it occurred?
A. I did.
Q. Did you take down the answers that were made to you?
A. I did.
Q. Does this report correctly give the exact replies that were
138 made to you by the houses here referred to?
A. It does. I would not swear to a word, but it gives in nearly every case the exact words. I may in writing quickly and looking at the gentleman to whom I was talking. I wrote without looking at my paper, but to the best of my belief it is absolutely verbatim, and I am sure that nine-tenths of the evidence on those parchments is verbatim.
Q. A portion I see here is in quotation marks.
A. With reference to the interviews at Grenoble that I had?
Q. Yes.
A. Yes, sir.
Q. I presume those portions are intended to be verbatim statements?
A. They are not verbatim, because all that was in French.

Q. The translation is verbatim?

A. The translation is not absolutely verbatim. If you will give me the statement I will tell you. (Taking the statement.)

Q. Leaving out the idioms, is it verbatim?

139 A. I suppose those in quotation marks are verbatim; I gave very few verbatim, though. Where they were very pungent I put them in quotation marks. For instance, "Jouvin and Company said;" that is put in quotation marks. It is the gist of what they said. That should not be really in quotation marks. It is the gist of what they said.

Q. Is it perfectly truthful as to what they said?

A. It is in every respect.

Q. Are all the other statements?

A. Everything; yes, sir.

Q. You have your original notes, have you not?

A. I have my original notes, most of them; some I have destroyed. I think I have all of the pertinent notes in regard to this. I have nothing here, because I had no idea—you know I didn't wish to be put on the stand; I had no idea of being put on the stand at all in this case—but I have them in my hotel in note-books, the majority of them. I heard as I came into the room a suggestion thrown out by Gen'l McCook

140 asking how this information was obtained from these houses; whether it was obtained from the office-boy or whether it was obtained from higher authority. As long as I am here and simply have two objects, to, of course, sustain that report, which is essentially mine, and to sustain my own personal reputation on this question, I should like to make a statement in that connection, if I am not out of order in so doing.

The GEN'L APPRAISER. Yes; I wish you would.

The WITNESS. I was asked by Gen'l Starring if I would help him in this matter as regards silk and gloves, and I consented to do so. I didn't do it with any particular view. I mean I had no view to the object in end—that is, to establish under valuations—at all. In fact, being an Englishman, and not an American subject, I had no sympathy either with you or with the American merchants here. I did believe from what I had heard that the Government were very harsh with these importers, and Gen'l

141 Starring simply asked me if I could take any steps with a view to establishing the market price of silks and kid gloves. I suppose I had better refer only to kid gloves in this connection. I went to work with that end, simply to establish the market value of kid gloves, and not caring for what it was going to be used. Those were my orders and I carried them out to the best of my ability. In every instance, without one single exception, I never approached one of those large firms, whose names are mentioned on those parchments, indirectly. I wrote to them all first requesting an interview. I wrote to the heads of the firms. That interview was in every case accorded. I never saw an expert or an employé in one of those firms before I had seen the principal himself. When the principal asked me, as they did in a great many cases, to let the matter go no further, and when they refused to give me any evidence whatever, as they nearly all did, at first, I simply left the question and brought

142 other influence to bear on them. I brought personal influences.

I was known to a certain extent in London, where I could not approach them semi-officially, of course. I was not an officer of your Department. I only had a letter of instructions from Gen'l Starring authorizing me to act for him in this connection. When I could not approach them in that way on pleasant grounds, I brought other influences to bear, and in no case have I got one word of evidence which was not authorized, and, with one exception, at which was not present the chief of the firm whose name is put on that parchment. The exception is that refer to was that of I. and R. Morley. The chief of that firm is Samuel Morley, who is a member of Parliament. I suppose I saw him three times before he would help me in the matter. I told him what my object was. I told him I wanted to establish the market value of certain makes of kid gloves. I told him the reason I wanted it.

143 I said I wanted to help this Department in some investigation they were making on this side; that I had no bias one way or the other. I simply asked him would he allow me to see his expert, or experts, and take their opinion with reference to certain samples of kid gloves that I had, and to ask them some general leading questions in reference to the glove trade. He several times declined to do this. He was always polite. He said, "Mr. Morten, I will talk to you about anything else, but I will not talk to you about this. I don't like the idea." Afterwards I did get him to consent to do so, but I understood afterwards, I don't know whether it is true, that he took the opinion of his counsel before he would do so. Then he introduced me to Mr. Wolcott. Mr. Samuel Morley, member of Parliament, who is the chief of the firm, introduced me to Mr. Wolcott. Gen'l Starring was present at that interview, although he was not at the other, and I think Mr. Nunn,

144 the vice-consul. No; Mr. Nunn was present at the interview, but he was not present when I examined Mr. Wolcott and asked him questions; but Gen'l Starring and Mr. Nunn, the vice-consul of the United States in London, will corroborate this statement if it be necessary. When Mr. Morley introduced me to Mr. Wolcott he said, "I have no time to be present myself; if you will, take Mr. Morten into the office, and Gen'l Starring, and answer certain questions that they may put to you, and do it fully." I went in, and the result was the evidence obtained from Mr. Wolcott, the expert of I. and R. Morley, chief of the glove department, as it is written down in those parchments. I presume this inquiry is in regard to the Alexander glove, is it not?

The GEN'L APPRAISER. Yes; and collaterally as to the rest.

The WITNESS. It was not only as to the Alexander, but all the rest as to which he could give me any *any* information.

145 By the GEN'L APPRAISER:

Q. There is one package here marked "A." Do you recognize that package?

A. I do; it is in my writing.

Q. The notations are in your writing?

A. Yes, sir; they are.

Q. And, as I understand from the report, they are intended to represent what was said to you by the firms dealing in those gloves?

A. The actual statements, without any favorable coloring, one way or the other, in this matter.

By Mr. McCOOK:

Q. Was the merchant in any case sworn?

A. The merchant was in no case sworn.

By the GENERAL APPRAISER:

Q. Did you have authority to swear the merchant in any case? Were you an officer of the law and the Government, authorized to swear the merchant?

A. No.

Q. These packages are marked "Exhibit A." Did you receive them from the Treasury Department or Gen'l Starring?

A. Through Gen'l Starring.

Q. They were handed you by Gen'l Starring, were they?

146 A. Yes, sir.

Q. As to the other parcel, where the gloves are marked "Exhibit B?"

A. Those I bought.

Q. From the houses there represented?

A. The houses whose names are on them; no, some of them were bought through other firms.

By Mr. McCOOK:

Q. Did they purport to have bought any Stewart gloves in London?

A. No; I do not think there were any Alexander gloves bought there.

By the GEN'L APPRAISER:

Q. These notations are always your own under Exhibit B?

A. Yes, sir. I rather launched out of the way when I spoke about these parchments, with reference to the Fourth Street Warehouse Company, and Gen'l McCook's statement that I was turned out. I wrote Mr. Mellish, who was the manager and director of the Fourth Street Warehouse Company, asking an appointment. He wrote back, stating he would see me at a certain hour. I called and told him my business. I suppose

147 we conversed about ten minutes and then he rang the bell and sent for his silk expert. The silk expert said he would give me every information that he could without revealing their trade secrets. "Because," he said, "we only know you as Mr. Morten; we do not know who you are at all, and we do not want to tell you the price at which we buy our silks of Mr. Bonnet and of Jouvin, or any of these houses, because you might go to another firm and say, 'The Fourth Street Warehouse buy this silk at five francs the ounce and you pay 5.30 francs,'" and so on. So he refused on these grounds to give me any information on silk. Then, in reference to gloves, he called his glove-buyer, and the glove-buyer gave me at that and subsequent interviews, at all of which Mr. Mellish, the manager and director, was present, the information on the gloves. Afterwards, in a social way, Mr. Mellish showed me over the warehouse and over the floors, and explained all the departments, and so on, as a social matter. If that is turning me out of the warehouse, I

148 don't quite understand it, or showing me the door. I dare say he may have gone so far as to have gone to the door and let me out, but I don't quite remember that, general.

Mr. McCOOK. I will proceed when you are through with your statement.

The WITNESS. I may add that I have got the permission of all these houses in London, but it was not given until I had a great deal of trouble to get it, to put their names on this evidence. I have got the permission of all but one; I have got the actual direct permission of all but two. One of the houses, Forster, Porter & Co., know that their name will appear, but they didn't want, for certain reasons, which I presume will be apparent to those who are conversant with the glove trade, from the fact that they may have relations with parties interested in this case—they didn't want it to appear that they were too willing to give evidence which might prejudice people on this side as to parties on the other. The other house was
149 the Fourth Street Warehouse. I will not be sure about it, but I think, in the presence of Gen'l Starring and myself, they understood, in any case, for what purpose this information was being given, and I think Mr. Mellish and Mr Lang, who was the expert of that company, said that any information they had given was for the service of the Department in this matter.

By Mr. MCCOOK:

Q. Was that permission given in writing?

A. In no case was it given in writing; it was given verbally.

Q. Will you please name the members of the firms?

A. Dent, Alcroft & Co. The chief of the firm is Captain ; he is the senior partner; the junior partner is Mr. Berrington.

Q. Which authorized the use of the firm-name?

A. Both—J. & R. Morley. The chief of the firm is Samuel Morley, member of Parliament. There are other partners, but everything that goes there goes to him, and he direct' that all these matters should go
150 to him before any statements were made. He, through Mr. Wolcott, authorized the use of their name. Mr. Wolcott is the expert of J. & R. Morley.

Forster, Porter & Co.: Their expert is Mr. Ewen, or Ewing. They knew that this information would appear under their name.

Fownes Bros.: I cannot remember the name. Mr. Fownes, who is the chief, is not a partner at all. He is what I suppose you would call a sleeping partner, and never goes up there; but I saw the chief, and I don't know as I can recall his name at this minute. His expert is Mr. Halliday. They gave me permission, too, after a great deal of trouble, because they are interested in Stewart's Alexander gloves, to use the evidence.

Q. They are manufacturers, I believe?

A. They are manufacturers. I believe they have business with Stewart, and they were very anxious—in fact they did wish, to a certain extent, to amend their evidence when they knew it was apt to make a dif-
151 ference to Stewart, I believe, but I told them I should put it in as they had given it, and it was left.

There was another firm, the Fourth Street Warehouse: Mr. Mellish, the manager, and the buyer, Mr. Lang.

I may state that Gen'l Starring was present at most of these interviews, and Mr. Nunn at many. Gen'l Starring was present at all of the interviews, I think.

By the GEN'L APPRAISER:

Q. Have you finished now your statement?

A. Yes, sir; all that I can recall in this connection.

By Mr. CLAFLIN:

Q. Was it understood that they were giving you the price at which they bought these goods—actual purchases made by them?

A. Yes, sir, it was; and in corroboration of that I got them, after a great deal of difficulty, to show me the invoices in a great many cases, made out by the manufacturers of these several gloves—Jouvin, Trefouse, and so on—the actual invoices.

Q. You saw them?

152 A. I did see them, because I didn't wish to take anything by hearsay—what you call hearsay evidence. I didn't wish them to say, "We pay so much for these gloves," but I got them to show me the invoices; and I saw twenty invoices from one firm. For instance, at Forster, Porter & Co.'s I suppose I saw fifty invoices, dating back for the last four or five years, and so on with others. I saw as many as I could in every case, and I think in all cases I saw one or two. I do not think the Fourth Street Warehouse Company showed me any invoices, but I saw invoices at Dent, Alcroft & Co.', and I saw invoices at Forster, Porter & Co.', at J. & R. Morley's, and at Fownes Bros. I do not think I saw any at Leaf's, and I do not think I saw any at the Fourth Street Warehouse.

By Mr. MCCOOK:

Q. Were these recent invoices?

A. They were invoices of very recent date.

Q. Had the prices remained the same for a number of years?

A. No, sir; they had not.

By Mr. CLAFLIN:

Q. These prices quoted are recent prices?

153 A. These are recent prices. They are to-day's prices. The prices quoted are from the prices of last December, 1878.

By Mr. HALSTED:

Q. If it is relevant I would like to ask you what your general duty was in London?

A. I have no business in London. I have for the last three years, more for pleasant, congenial employment than any other reason, acted as private secretary of a friend of mine, Gen'l Lichmere, who was a member of Parliament, but that is the only business I have done in London, except in the last six months I went into this thing. I used to go to Gen'l Lichmere's house a couple of hours a day, and used to attend to his bills in Parliament, and so on, and his correspondence; it was only a few hours a day, and it was very pleasant to me, because I had a very good insight into the affairs of the country. That is the only thing I have done for the last four years, and that was only during the session.

By Mr. CLAFLIN:

Q. You are an Englishman by birth?

154 A. I am.

Q. Had you ever been in this country?

A. Yes, sir; I have been in this country before.

By the GEN'L APPRAISER:

Q. You make oath to the truth of the statement in this document?

A. Every statement in that I will make oath to.

Mr. MCCOOK. As to my criticism of what appeared yesterday, I simply objected to the paper on the ground that no statement in it was sworn to by the merchant by whom it purports to be made. I have not said that it has not been sworn to by other people, because it has, but that is simply hearsay. And in the same way—and I was particular to say it was hearsay—I repeated what had come to me as an interview at the Fourth Street Warehouse. That interview Mr. Morten says, was inaccurately reported. As he says so under oath, I am very glad to say that what was reported to me I shall give no weight to.

155 The WITNESS. That is sufficient, general; I am very glad to hear you say that, and that is the end of it.

Mr. MCCOOK. You say here under oath that there is no truth in it, and I accept that. The other was a hearsay statement, and I do not wish to put any gentleman in a wrong light. Now I would like to ask Mr. Morten a few questions.

Q. How did your relation to the Government commence—to our Government, in this matter?

A. I will tell you that very willingly. I think about the year 1870, about eight years ago—1870 or 1871—I was private secretary to the United States special commission in Europe. Gen'l Starring was the chief of that commission, and, as I say, I was the secretary to that commission, and I assumed a very important report, which was made on the spot, at Sheffield, in Yorkshire, with reference to the alleged undervaluations by the merchants of Sheffield in their consignments of manufactured

156 steel to the United States, in which report I entirely exonorated the merchants from all question in this matter.

Q. I remember that report; how about your connection with this particular subject?

A. Gen'l Starring received instructions. I was not doing anything and, a few days I helped Gen'l Starring with some of his reports and things, putting them into shape, and about July, as I recall it, he got a despatch from the Secretary of the Treasury stating that it was most important that in view of pending cases in court, or something to that effect, that if possible the trade or market value of kid gloves and manufactured silks should be ascertained, and Gen'l Starring was then going over to France. He had to make a report to the Government on appollinaris water and other things, and I had several talks with him on the question, and told him that I believed the only way to obtain it was through the

157 London merchants as a basis, and he asked me if I would undertake to do it and see what I could do. I told him I would, and he went away, and for three or four months I worked on it and didn't see him at all. I got the principal information in that report on silks, and also some information on gloves, but it was not until Gen'l Starring returned that we submitted these actual gloves. It was not until about November or December that we submitted these.

Q. Were you employed by Gen'l Starring *on* the Government?

A. That is a very funny question to ask. I will tell you why: because

Gen'l Starring, acting for the Government, I don't know whether I was employed by the Government indirectly, from his official position.

Q. Who paid you for your services?

A. I had no arrangement for pay; I received a certain compensation, as regards expenses, and other things were left open.

Q. On a contingency?

A. No, not contingent at all; simply left open. He said, "You
158 had better go into this, and leave it, and we will see what the result of your report is, and see if you are successful." I told him I didn't think I should be successful.

Q. Then you have no agreement with the Government or Gen'l Starring for a fixed compensation for your services?

A. I had no agreement with Gen'l Starring or the Government.

Q. Have you since obtained one?

A. I have obtained no agreement. I don't know what you would call an agreement.

Q. Any arrangement or understanding?

The GEN'L APPRAISER. How far is it necessary to go in that direction?

Mr. MCCOOK. It is important to find the relation of this gentleman to the case.

The GEN'L APPRAISER. He says he had not then; how lately do you mean?

Mr. MCCOOK. Up to this moment.

The GEN'L APPRAISER. I do not think it is proper.

The WITNESS. That is a personal question, and I decline to answer.

159 The GEN'L APPRAISER. I have anticipated you, Mr. Morten.

By Mr. MCCOOK:

Q. Have you ever been a glove merchant or dealer in gloves?

A. I have not, sir.

Q. Have you a practical knowledge of the value of kid gloves?

A. Only such a knowledge as has been acquired during the last six months.

Q. There is a certain package of kid gloves that came out from America purporting to be Alexander gloves?

A. There is.

Q. Do you know them to be Alexander gloves?

A. I do.

Q. By what means?

A. The first means you may call hearsay evidence. I found attached to them the seal of the Department; I think it is the collector of the port of Philadelphia; an official stamp. Accompanying them was an official letter to the effect that they were Alexander gloves, and so on; and then I took them myself individually, and handed them to all the first
160 experts of London—and they are the experts of the world—and they told me that these gloves were Alexander gloves.

Q. Did you find any Alexander gloves on sale in London?

A. I did not.

Q. Are there any of them sold?

A. I don't know; I could not tell you that; I didn't get any; I presume there must be though.

The GEN'L APPRAISER. No matter about that; you have answered the question.

Q. You swore in your report that those gloves, the identical six gloves that are there returned, are the gloves that you presented to each one of those houses.

A. I do.

Q. You are perfectly sure of that?

A. I am.

Q. There is no possibility of mistake?

A. No, sir.

Q. When you presented these gloves to those experts did they recognize them outside of any mark?

A. They did; I never told them whose glove they were.

161 Q. Did they say they ever bought any Alexander gloves?

A. If you will allow me to look through my report I will tell you.

By the GEN'L APPRAISER:

Q. Your report is full on that point?

A. I presume it is. I don't wish to answer any question without reference to my notes.

By Mr. MCCOOK:

Q. Do Dent, Alcroft & Co. offer for sale Alexander gloves?

A. I don't think they do.

Q. Did you see any in their establishment other than the package that you took there?

A. To the best of my belief I did not see any Alexandre.

Q. Do J & Morley deal in Alexandre gloves?

The GEN'L APPRAISER. You are simply expected to state what you know or what you don't know about it, one way or the other.

The WITNESS. I understand.

The GENEREL APPRAISER. You are not an authority as to what they do in regard to their general business.

162 The WITNESS. I make a general statement that I am not conversant with these questions, but I believe that all these firms, more or less, do have all the gloves, because they have special customers, and they get an order for so and so. Of course all firms have their special gloves. J. & R. Morley would have the Trefousse, but they deal in other gloves. I am not able to answer those questions.

Q. Of your own knowledge, do any of these London firms deal in Alexandre gloves habitually in the ordinary course of trade?

A. I would like to read through my report and see what I have stated, because these are matters that are very trying on my memory, and I had so many different gloves to go into.

Q. Did you see any?

A. I could not say until I see that report.

Q. Your knowledge is dependent upon your report?

163 A. My knowledge is not dependent upon my report; my knowledge is dependent upon my memory; and I don't propose to answer any questions which I cannot substantiate; that is all. I don't wish to give any evidence for you or against you; I simply want to tell

the truth of my investigation in this matter. I don't want to answer any question that I am not sure of.

The GENERAL APPRAISER. Do you understand, general, that there is any statement to that effect?

Mr. MCCOOK. Not at all; I am asking for facts. I want to find if the Government has any evidence in any shape or form that the Stewart gloves are sold in London. We claim that they are not. It has always been admitted that they are not.

The GENERAL APPRAISER. It is generally admitted, I suppose, that they are not.

The WITNESS. The glove is sold in England under another name. It is the same glove—the Courvoisier.

Q. Is it made by the same firm?

164 A. I would not say, but it is identical with the Courvoisier glove.

Q. Are you willing to swear to that?

A. I won't answer no, but I know it is stated that it is identical with the Conrvoisier glove.

By the GENERAL APPRAISER:

Q. It is simply stated so to you?

A. Yes, sir.

By Mr. MCCOOK:

Q. You don't know whether it is manufactured by the same firm that make the Courvoisier glove?

A. I would not like to answer that question.

By the GEN'L APPRAISER:

Q. You don't know?

A. No.

The GENERAL APPRAISER. I understand that if the Fortin glove does go to London, it goes there under a different brand or name, and not under the Alexander brand. I think that is generally understood.

By Mr. MCCOOK:

Q. I believe you stated that in no case the merchants who are reported to have given values here were sworn?

A. In no case.

165 Q. Were they called upon to give affidavits?

A. They were not. It was deemed better not. In the first place, I found every one of them would be absolutely averse to making an affidavit, but they were willing to make statements before witnesses which they knew were going to be put into my affidavit. They did not want to appear as accusers themselves; don't you see?

Q. They were unwilling to swear to the fact provided it was known, and over their own name?

A. They were what?

Q. They were unwilling to make an affidavit. Did any of them offer to make an affidavit?

A. None of them were asked to make an affidavit, so they naturally did not offer.

Q. You are sure of that, that none of these houses were asked to make an affidavits?

A. On these gloves? No, sir; they were not. When the question came up it was found they would be absolutely averse, and they were not
166 asked. In one or two cases I got information that it would be utterly impossible to get an affidavit from these persons, and they were simply asked if they would appraise the goods to us, I taking notes of their appraisement at the time.

Q. You say your report giving interviews with these people is not absolutely verbatim. You have given the substance of them?

A. Please make your question more definite.

The GENERAL APPRAISER. In Exhibit No. 1, this report.

The WITNESS. No, it could not be absolutely verbatim, because some of it was in French.

Q. I mean the ones made by the London merchants.

A. Yes, those are verbatim. Perhaps there may be a word changed, or two or three words on each parchment, but the words are not changed to alter the sense. There may have been a word in writing down short-hand. Short-hand writer missed a word now and then and fills it in.

167 Q. Then you don't pretend to be absolutely accurate?

A. Yes, sir; I do.

Q. Word for word?

A. I don't say word for word, but I am accurate in the true meaning of the words.

Q. In the translation of your interviews you do not claim that they are absolutely accurate in detail?

A. They are accurate in detail.

Q. In the meaning, but not in words?

A. In meaning. I could not say in words, because you couldn't get anybody to sit down and translate French and give the same words—any two people.

Q. I understood you to say before that the translation was not verbatim, but you gave it as near as you could according to the sense?

A. I left out a great deal that was not pertinent to the inquiry.

By the GENERAL APPRAISER:

Q. You understand French, do you?

A. I do; yes, sir.

By Mr. MCCOOK:

168 Q. In these statements furnished by different merchants when they gave their opinion, were their views based on actual examination or based in any way upon the brand?

A. It was based not only upon what you call actual examination but it was based upon the actual examination of every single pair of gloves in the whole lot. They did not look at the half dozen. They took each glove in each half dozen and looked at each glove of each pair. It was no cursory examination; it was an examination by skilled experts in each case.

Q. Did any one certify that those gloves were average gloves of the Stewart brand; whether they were selected gloves or poorer than usual?

A. You can take all that evidence from the affidavit, what they certified in answer to those questions.

Q. They stated nothing else than what is in the affidavit?

A. Nothing pertinent. If they said anything against the gloves, it is in the affidavit.

169 Q. If they said anything in favor of it, is it in the affidavit?

A. Most decidedly both ways; everything they said.

The GENERAL APPRAISER. As to that point we will examine further, Mr. Williams. This gentleman is not the gentleman who obtained the samples of the American glove. He simply, after they were obtained here, recently presented them to the merchants.

Mr. MCCOOK. I have got all that I care from him; that is, as far as he knows there were no sales of these gloves in England.

The GENERAL APPRAISER. He would have admitted that at the outset.

Mr. MCCOOK. But no merchant whose name is given in that statement as appraising these gloves was sworn. Those are the two points I wished to mention, because all of this English matter is irrelevant.

The GENERAL APPRAISER. That is a deduction of yours.

By the GENERAL APPRAISER:

Q. These tags on the English gloves I see have writing upon them. Is that your writing?

A. It is.

170 By Mr. HALSTEAD:

Q. How long were you connected with the Government? You speak of being connected with their examination at Sheffield. Was that your first connection?

A. It was.

Q. And your previous education and occupation had been what?

A. I was at that time in the office of the Atlantic and Great Western Railway Company in London, secretary to Mr. Woodman.

Q. In a business capacity?

A. Yes, sir.

By Mr. MCCOOK:

Q. Mr. Woodman is still here, isn't he?

A. Mr. Woodman is in London to-day. (To the general appraiser.) Do you want anything more?

The GENERAL APPRAISER. I think not; I think you have identified these packages of gloves here.

Mr. MCCOOK. Yes, I believe he has done that; it is unquestioned if he has not.

The WITNESS. May I make a personal request that you leave
171 out what I have said about being secretary to a member of Parliament. I am very anxious that I should not appear in this matter; I am here a private individual, and I wish the reporters to leave out these questions about myself. I don't want to have it stated that I was secretary to a friend of mine in London. It is my own business.

The GENERAL APPRAISER. You mean you don't care to get into the papers these questions about your personal employment?

The WITNESS. Yes.

The GENERAL APPRAISER. There is no harm about its being in the report. These are simply records for filing, and not for the newspapers.

Mr. MCCOOK. Nothing that is stated in ours shall go to the newspapers.

The GENERAL APPRAISER. Besides, it is all to your credit, I believe.

The WITNESS. I don't know about the credit, but I like as much privacy as possible in these matters.

By Mr. McCook:

Q. Did you make any investigation in Paris as to the price of goods?

A. I did.

Q. Did you go to Courvoisier's establishment?

172 A. I did go to Courvoisier's, I think; I can tell you in one second.

Q. It is not reported there, I think.

A. I almost think it is, but won't be sure.

Q. Not as I recollect it. I would not say accurately, because I have only had a chance to glance over the document. I have heard it read.

A. Yes; I did go to Courvoisier's and saw him himself.

Q. What is the report?

A. He said the skins per dozen for American gloves cost him twenty francs. He said that the two-button gloves for America cost total 34.61. He said that these prices were now the same to-day, except the skins only cost him twenty. He said that gloves with white welts cost more than the self welts. That is apparently false; I simply give Mr. Courvoisier's statement; I don't mind your repeating it, because it was so absurd on its face.

Q. You pronounce it false then; did you go to Mess. Fortin & Co.?

173 A. I did call twice; he was out both times; and I had to leave Paris that night, and I could not see him.

Q. Did you go to Trefousse?

A. Yes, sir; I think I saw Mr. Trefousse.

Q. Did you ask the selling price of these gloves in Paris; that is, the Courvoisier or Trefousse?

A. Do you mean the retail price?

Q. No, the wholesale price for American gloves.

A. Their whole argument was, "We don't sell American gloves in Paris;" so it would have been absurd for me to ask the question.

Q. Did they give you the price at which they sold them in America?

A. The price that they invoiced them at?

Q. Yes.

A. Of course I knew it.

Q. Did they say they were willing to sell the goods at the invoice price?

A. Yes, they all did.

Q. All the manufacturers in Paris?

A. But if you want to get the true evidence you must take the whole of it, take the truth and the other too.

Q. Then all the manufacturers that you saw in Paris said they were willing to sell the gloves at the invoice price?

174 A. I would not say that; I think some of them did. I will see what Trefousse did say. You are speaking only of Paris now, are you?

Q. I am speaking of Paris; yes. If you strike there any of the other manufacturers in Paris, let me have the result of it.

A. Here is Kairer Jouvin.

Q. What did he say he would sell at?

A. I got a quotation from him. Would you like to have it?

Q. Yes.

A. He quoted English two-button gloves at 61, which is rather high.

Q. That is the Widow Jouvin?

A. That is a quotation made to a large firm in Paris. It is in their figures.

Q. What name was inserted where that was cut?

A. I refuse to give that, because I don't wish to give the name of the firms who helped me in this matter. It was a large commission house in Paris. A London house applied to their commission house in Paris for the prices.

Q. For gloves for the English market?

175 A. Yes, sir.

Q. 61 francs?

A. Yes, sir.

Q. It does not say gloves for the American market?

A. Well, they are the same thing.

Q. Well, there is a very grave controversy with all the experts. Courvoisier stated that they would sell at 42 francs, with a rise of how much?

A. I don't think he did; I will look; I did not say that.

Q. I understood you to say that he said the invoice price was 42?

A. I never mentioned the figure at all; I am quite sure of that.

Q. Did you hear while in Paris that Fortin & Co. gloves could be bought at any particular price there?

A. I did not make any inquiries. I suppose I only spent about two or three days in Paris in this connection. On some of the firms I had to call several times, the chiefs being out, and I didn't want to talk with the subordinates, and, as I said, Fortin & Co. I could not see. I went there twice and he was out both times.

176 Q. Then you think that in investigating the market value of goods in Paris, the best place to go is somewhere else than Paris, and only spend three days?

A. I did not think anything at all; anything of the sort. I did not say I thought so.

Q. How much time did you give to this matter of investigating the market value of gloves in France, to France itself?

A. I suppose I spent about three weeks in France, two or three weeks.

Q. How much of that was in Paris?

A. As I say, three or four days; any how three days, probably more.

Q. How much time at Grenoble?

A. At Grenoble, I spent about the same, a part of a week.

Q. Was all these three weeks given exclusively to kid gloves or to silk?

A. No, the rest was given to silk.

Q. I don't want to touch on the silk, but I want to know what proportion was given to the kid gloves?

A. I had no information to get from the manufacturer. I only
177 wanted to be able to say that I had called on them to get their evidence, and I found the evidence they gave was so inconsistent and full of contradictions I did not attach any value to it at all.

Q. So it appears from your report.

A. I only put it in to show the contradictions that appeared in it.

Q. Let us know how much investigation you made in Paris.

A. I told you I called on all these different people. One interview was quite enough, I could not get any more from them.

Q. Did you hear from any of the makers of gloves, that send gloves to the American market, the prices at which they would sell them, as Perriot, Jugla, Jouvin, and Fortin?

A. Yes, sir.

Q. What was the result?

A. I think they all said that they would sell them at that price.

Q. At what price?

A. I cannot tell you.

The GENERAL APPRAISER. The document contains considerable on that subject.

The WITNESS. You have the report.

178 Mr. MCCOOK. It is better to have a witness. This thing of having secondary evidence when you have got a witness here is absurd.

The GENERAL APPRAISER. I understand that the witness has asked permission to refer to the document by way of refreshing his memory. He made notations and it is perfectly fair that the witness should refresh his memory from those notations which he made for the purpose of accuracy.

Mr. MCCOOK. I don't object to that, not at all; I would like him to refer as much as he wishes. (To witness.) You said just now that you thought each of the above manufacturers sending gloves to America would be willing to sell them at the invoice price?

A. They said they would be willing to. I know that Courvoisier did. Tréfousse I cannot find here, at the same time they were perfectly well aware that I was not a buyer and the Government was not a buyer,

179 so, of course, I attached no importance to it.

Mr. MCCOOK. I have no further question to ask Mr. Morten.

By the GENERAL APPRAISER:

Q. These French manufacturers, with whom you conferred, did they understand your mission?

A. They did. I told them frankly in each case.

Q. What it was for?

A. I did.

180 (Plaintiffs' counsel then offered the records of the evidence of Paul Ancelle, delivered before the appraising officers, as to the price at which his firm offered to sell the goods in question in Paris, and as to the cost of their manufacture, and as tending to sustain the protests.

Objected to by defendant's counsel.)

The COURT. Ruled out.

(Plaintiffs' counsel then and there duly excepted to said ruling.)

The excluded record affected by said ruling is as follows:

181 PAUL ANCELLE, being duly sworn, testifies as follows:

By Mr. MCCOOK:

Q. What glove manufacturer do you represent in America?

A. Messrs. Courvoisier & Co.

Q. You have been long engaged in the glove business, have you not?

A. Yes, sir.

Q. Have you any knowledge of the prices paid by Courvosier & Co. for

skins which were manufactured into gloves which came out to this country during the summer?

A. I have a knowledge of it, and I have received from our firm on the other side invoices of skins purchased at the time you mention.

Q. Will you give us the benefit of that investigation?

A. Yes, sir; I have it in my possession (producing invoices). Their invoices run from May, 1877, to July, 1877, and the skins purchased at that time were probably employed in the following spring to cut gloves; that is to say, the skins purchased in May, 1877, are made into
182 gloves in February or March or January, 1878, and therefore these prices cover the cost of skins of which the gloves shipped in the spring of 1878 were made.

Q. What is the result of that, without going into all the detail?

A. The lowest skins invoiced were at 24 francs, I believe, and the highest 31.75. I have not made the exact average, but it is about 29 francs I should think.

Q. Does that cover their whole transaction?

A. I couldn't tell; but it is the bulk of them. In these papers there is a list of skins purchased for the whole year by some of our agents. Another thing that I want to call your attention to is that these skins are all French skins, not German skins of which seconds may be made, but French skins from Troyes and other places.

Q. They are supposed to be the best skins?

A. They are French skins that kid gloves are made of.

Q. The average is about what price?

183 A. I should think the average is about 29 francs per dozen. I supposed the highest was 31.75. Here is one which averages 38, I see; but there are very few of these. Here is another lot at 28 francs.

Q. How many dozen skins are covered in the transaction?

A. I have not made it up.

Q. It is a very large amount?

A. It is a very large amount; you can judge by looking at the papers.

Q. You have before testified that the gloves sent to America is a different gleve in quality and cost of manufacture from the ones sent to England by your house?

A. Yes, sir; as a general thing; that is, the quality of gloves made for the New York market is not the same quality as the best quality of our Courvoisier glove sold in the London market.

Q. What is the difference in value between the two?

A. The difference in value is about 8 or 9 francs a dozen, I suppose.

Q. Have you any knowledge why it is that it is claimed that
184 the first-class gloves which go to England are more expensive gloves to make, and a higher priced glove than those which come to America?

A. Yes, sir; I have a letter from a gentleman of our firm who wrote me at the time that this investigation was going on. His letter is dated the 9th of September, 1878. It was shortly after I was called here.

The GEN'L APPRAISER. What is this letter?

The WITNESS. It is a letter from Mr. B , one of the partners of the firm; in fact, he is the managing man at present in the firm. After being examined here, in August, I believe it was—the middle of

August—I wrote him all about this investigation, and, of course, gave him the details of my interrogation; and I have made a rough translation of his letter, as literal as possible, and here is the original letter (producing the letter). The letter is dated September 9th, 1878. I have not translated it all.

185 "I have seen your two letters of the 28' of August, which crossed mine of the 4th inst., which I confirm. For the last two days I postponed answering your questions relative to the English prices. I regret not to have done it sooner. There is a great deal to say to explain the difference of prices between London and Paris. First of all, as you have already stated, the quality is altogether different. This you know perfectly well. Second, the London price includes the profit of the London house who buys, as in Paris, at the market price. A house such as Courvoisier & Co. has no less than 150,000 francs expenses, in rents, salaries, taxes, travelers, etc., not including the guaranty commission. Third, the sales made there are more of retail than anything. At most, could they be called jobbing sales. You have seen by their order that in most cases they are composed of two, three, and six pairs of a kind. You easily understand that gloves manufactured in this condition cost

186 enormously more than one lot of some thousand dozen of a kind. When by chance a house gives us a larger order, which is of rare occurrence, we do not hesitate to allow an extra discount, which of course is never done for purchasers of single half-dozens. Gloves have never billed in London in francs, and all those that we have delivered in Paris were invoiced at 42 to 45 francs, according to the kind of welts, viz, self color or white, and according to the importance of the purchase, whether in few pair or a larger lot. Fourth, all the London gloves are with white welts, for which now we ask from two to three francs more per dozen than for self welts. We have had to buy this year large quantities of skins for that purpose exclusively, at comparatively high prices. These facts, even outside of the difference of quality, are amply sufficient to explain the difference of prices between the London retail sales, and the

187 Paris wholesale ones. To resume, this difference is thus composed: First, difference in quality. Second, profits and expenses of the London house. Third, the extra value of goods sold at retail. Fourth, the extra value of white welts over self welts. I was telling you in my last letter that in New York we did not form a just idea of the difference in cost of manufacture of retail orders and the cost of manufacture of large orders of the same kind. I will show you in a few instances the difference in the cost of fabrics. Dyeing: Suppose five dozen orders, and we have very often much smaller ones. If the gloves of that order are assorted in colors, as we frequently have to make them, we may have three pairs of lavender, three pairs of maize, three pairs of salmon, and three pairs of another light color. It takes one man employed for two or three hours to manipulate two skins. Of these two skins probably half of one will be lost, as two skins will cut often more than three pairs."

The GENERAL APPRAISER. Three pairs?

188 The WITNESS. Four pairs, I believe, it says; I may have got it a little mixed up.

"The same man in the same time will dye just as easily twenty dozen of skins of the same color, and the loss in cutting will be half a skin on

twenty dozen skins instead of half a skin on two skins. The different forewomen and employés will take as much time to make the different bulletins for three pairs as for twenty dozen of skins, and in every phase of the fabrics you will find the same thing. I could not at present precisely value the difference in manufacturing small retail orders and large wholesale ones, but I estimate that it must be seven or eight francs per dozen. Remark that I only speak of the manufacture, not of the sale at retail, where it is still more marked. Mr. Dunham was perfectly right"—

This may be of a private nature.

The GENERAL APPRAISER. I would like to hear what he says.

The WITNESS. (Reading.) "Mr. Dunham was perfectly right to
189 say in his report that it was absurd to compare retail selling prices to wholesale selling prices."

Mr. MCCOOK. We will agree with him that far, at all events.

The GEN'L APPRAISER. That is a thing we never did here.

The WITNESS. You had some price currents?

"I have had in the run of my business experience to follow very closely the operations of two retail glove stores here in Paris. They are first-class stores and make the best in the city. When the yearly sales arrived at 1,200 or 1,300 dozen it was considered a very good result, and yet the expenses were as follows: Rent, 10,000 francs; taxes and insurance, 1,000 francs; salary of employés, 5,000 francs; gas and fixtures, 1,200 francs; interest on stock, 1,500 francs; loss in gloves damaged (or what they call depreciation of stock), 3,000 francs; total, 21,700 francs."

Mr. COOPER. What per cent. does that depreciation represent?

The WITNESS. I don't think he has mentioned it.

190 Mr. CLAFLIN. This is the expense of the retailer in selling these goods.

The WITNESS. Yes, he wants to show here that on 1,300 dozen, which is the most that they have sold, the expenses of the sale of the 1,300 was 21,000 francs.

"Now, calculate how much higher than the wholesale prices these gloves ought to be sold at to cover these expenses and make a reasonable profit. In fact, I would rather sell gloves manufactured by us for large orders for 40 francs than to sell them manufactured for retail orders at 60 francs."

By Mr. CLAFLIN:

Q. For two-thirds the price, from 40 to 60?

A. Yes, sir.

Q. Is that the way that business is done, in case an order is given by a small retailer, do you dye for him two pair at a time, or six pair at a time, and not take it from a large lot?

A. No, sir; our principal customers in England are retailers, as
191 you may probably know. We, having a house in London, do not get orders from large houses; the bulk of our business is special orders given by retailers. Very often I have seen orders, and I have now in my possession sheets of orders from London where there are smaller orders than five dozen, sometimes one and a half or two dozen; they will

want a certain class of goods. They want three-button with large white welts, or they will want two or three of these gloves in different sizes and the colors assorted into dozens and half dozens. Three pairs of each color in a dozen is about an average of an assortment. One man wants five dozen, in which there will be four colors, another man gives us an order for three dozen where there will be perhaps five colors, and different colors. They have got to be dyed each one separately.

Q. Are there not some large retailers of gloves in London?

A. There are; yes, sir.

Q. Do they give their orders in this little way?

192 A. You know Paris and London are so near that they avoid keeping stock. Of course they will give a larger order for blacks, for instance, but not for fancy colors.

Q. Always in that very small way?

A. Most generally. I would not say it is absolute. Some people, every time they give us an order it is for three dozen.

Q. With this great expense you ought to give them to them. They could not any more than make a living, I should think, from the expense that is represented there?

A. We are talking of Paris gloves. I am not officially informed, but I am informed that one of the stores, the , is one of the most paying stores in Paris, and, I think, another one is the Pre , though I am not positive, but I merely infer it; they have made a great deal of money.

Q. How is it about the Bon Marchi?

A. That is a different sort of a store altogether. They give a large order in one color.

Q. They sell an immense quantity there?

193 A. They do; I am told by parties supposed to know that they don't make anything at all on their glove department at retail; they sometimes sell below cost and sometimes above; but the expenses are so large that at the price they sell at they cannot make any profit.

Q. There is another very large store, the Lenore. They must give large orders?

A. They probably do. I should think that, having the manufacturer at their door, they would not give a larger order than they can help, because they can give an order every day.

Q. This last summer I saw ladies in there buying—I don't know many of them—buying two or three dozen apiece, and I thought they were going to cheat the custom-house here?

A. And probably did, too; they buy of a great many manufacturers there.

Mr. McCook. They sell very close, though.

The Witness. More than close. I was told last summer in Paris that there must be in the neighborhood of 30,000 dozen gloves imported

194 by private parties that did not pay any duty. They computed the number of American visitors at about forty thousand, and if they all bought only a dozen or a dozen and a half, or even nine pairs, it would make that amount.

By Mr. Halstead:

Q. You were speaking of supplying the London market with kid

gloves. Is London a large market for Paris gloves; I mean as compared with Paris itself?

A. I can only judge of that by the sales of our house. I think we are selling our gloves very largely there.

Q. To London, and always in this small quantity?

A. In small quantities, but we have a very large trade.

Q. Your correspondent, I suppose, would rather sell a large quantity of gloves at 40 francs per dozen than to sell the small quantity which he is in the habit of selling at London at 60?

A. He said he would rather, if he had to manufacture in that
195 way. He does sell in London higher than he does in Paris.

Q. He is a manufacturer, and therefor', as a manufacturer, he would rather sell in large quantities at 40 than in small quantities at 60?

A. Yes; this is merely a show of difference.

Q. Upon what does he base his estimate of cost if he can get down to forty francs?

A. He does not say that the gloves that he manufactures cost 40 or 60 francs. He simply takes these figures to make a comparison. He would rather sell with that difference.

Mr. CLAFLIN. I think the inference is very clear that they must be very dear at one price or very cheap at the other.

A. Yes, sir; that is a comparison that he makes, and I don't suppose that if he was questioned closely he would stick to these figures exactly. Then he would have to make a calculation.

Mr. MCCOOK. They make large orders for England. The order during the year would be a large amount, and that is composed of a large number of small separate orders; and the difficulty is in making
196 the colors and the general combinations and all that. On the average of business the year round, he would rather make the one color.

The WITNESS. This follows an explanation about the retail store, and he says he would rather make a large quantity for 40 francs, and have a large business, than to sell for 60 francs 12 or 1,300 dozen.

By Mr. HALSTEAD:

Q. You are familiar with the course of the house, being their agent. I observe in this tabular statement of the Government that there is no estimate of the Courvoiser gloves as to their cost of manufacture. Have you anything yourself?

A. I think I have a letter from the house (producing a letter). It is in French.

The GENERAL APPRAISER. Give us the translation of that in your own language.

The WITNESS (translating). "At the time of your leaving Paris we had not been able to finish up our cost price for manufacture of the
197 second quarter of the year, only concerning the leather, and which is, as you know, 22.616 francs per dozen. We have just finished our account of dyeing, cutting, sewing, and other things, and we produce them hereunder. We have in this six months died, cut, and sewn thirty-three thousand seven hundred and twenty dozen (33,720) and three pairs of gloves—one, two, three, four, and other buttons. We have spent, net,

for dyeing 58,585.20 francs; so that quality per dozen, of two buttons medium, the average price is 1.73 f."

By Mr. HALSTEAD:

Q. What did you say was the average cost of the leather?

A. The average cost of the leather is 22.616 f.

Q. Does that mean for a dozen of gloves or a dozen of skins?

A. That is a dozen of gloves, "The cutting is 131,300.70 francs; the average price 3.89 f. for two buttons 3.75 f. or 3,752 f. for sewing; the total expense is 205,595.74 francs, average 6.10 f. For a pair of two buttons 5.704 f. Divers manufacturing, such as buttons, button-
198 holes, dressing, and boxes 31,736 f., average 94 centimes, or 9.47. So the manufacturing total is, average, for a dozen of two buttons 12.018 f., adding the leather, 22.616, gives a total of 33.634 francs."

By Mr. HALSTEAD:

Q. Has he included every item of cost?

A. No; this is of course leaving out the interest on stock. That includes all rent and clerk expenses. These are included in every item. In our house each department has got a separate account, including expenses of the whole department, the interest on the capital in stock, and everything, and the profit has nothing to do with this. This is the actual expenses of each department, including everything.

By the GEN. APPRAISER:

Q. Just manipulating the gloves?

A. Just manipulating the gloves. Now, our profit and interest has got to be added on that. He says: "You will see from the explanation that we have given you that if the amount of our manufacture was in-
199 creased, all these prices which contain rent, employés, foremen, inspectors, &c., would diminish, but that we are indeed sure to manufacture without any increase of expenses a much larger quantity of glove than we have made this quarter."

Mr. MCCOOK. The footing in that corresponds with Mr. Morten statement. I would like to call the general appraiser's attention to it.

The WITNESS. This is a copy of our books, which we can get certified at any time.

The GEN. APPRAISER. (reading from the statement in evidence). "This is apparently, on the evidence of London and other disinterested manufacturers and merchants, false." That parenthetical clause is of some consequence.

By Mr. HALSTEAD:

Q. I understood you to say that the skins that you purchased in the last half of 1877 are brought into production the first half of 1878—that is January, February and March?

A. Generally.

Q. Therefore you carry the stock quite a long time?

A. The stock of skins?

200 Q. Yes.

A. From one season to another.

Q. What is the occasion of that?

A. Fresh skins cannot be dressed. If we did so we would spoil a large

quantity. We always do spoil some, but if we were to use them at once we would spoil a larger quantity. We have special places to keep them in stock where they can dry and lose any animal matter that the air will take up. Another thing is that we cannot begin to sort our skins until all the purchases are in and they have all been examined and marked and divided into lots.

Q. Then what did I understand you the average cost per dozen skins was for the period of 1877 which you have mentioned?

A. From the prices that I have given there it amounts to about 29 or 30 francs per dozen skins.

Q. 30 francs would be the maximum?

A. I think so, from these papers that I have here. But this will be increased, as I have remarked, by the imperfect skins. These are
201 the skins just as we buy them, and when they are looked over there may be some skins that are put in second quality, &c., and it amounts to this price that I give you.

Q. The depreciation of the skins in producing a second quality would establish that?

A. But there are a great many other skins besides the second quality. Some skins are worth a great deal more than the average price; some are worth more than 30 francs.

Q. Is the price of skins at the market of Choumin now less than it was in 1877?

A. At present?

Q. Yes—say for the last six months.

A. I am not posted in the skin market now.

Q. This is an average low price, isn't it?

A. When I was in Paris the market was as low as it had ever been.

Q. This is a very low price, isn't it—30 francs?

A. It is.

Q. Less than the average?

202 A. It is a low price now; I don't think it has been at that figure for some.

Q. Do you estimate how many pairs per dozen of skins are made?

A. To average it would be rather a difficult matter, because the skin is so different but I think that they average about 21 or 22 pairs of two buttons in a dozen of skins.

Q. Then you have estimated upon the basis of giving 22.61 f. as the cost of the skins?

A. Yes, sir.

Q. You have estimated for dyeing, cutting, and sewing buttons, dressing, and so on. Have you estimated for splits and tears?

A. Splits and tears of what?

Q. Of the gloves when being made up?

A. They never split when they are made up; they split afterwards.

The GEN'L APPRAISER. They are so given in the most solemn reports we have had here.

The WITNESS. I am not precisely a manufacturer; I am familiar with it; but I do not think there is so much of it. There may be some.
203 I will tell you where there is a loss; it is in the dressing of the skins. There is where the split comes in.

Mr. HALSTEAD. I was referring more particularly to , after the glove was got ready to be put together.

The WITNESS. There is a loss arising from the gloves being spotted, &c., but it is the business of the cutter to cut his gloves in the part of the skins that is best.

By Mr. HALSTEAD:

Q. What is your cost of the dressing the skins?

A. That is included in the 22 f.

By the GEN'L APPRAISER:

Q. How much do you make the dressing to be?

A. The dressing is about 5 f.

Q. So we have to take that 5 f. off the 22 francs?

A. No; you know this is for a dozen gloves 22 f., and you would have to make it 42 f. take 5 f. off.

By Mr. HALSTEAD:

Q. What do you say—45 f.?

A. 22.616 is for one dozen of gloves; it is not exactly that.

Q. It cost 5 f. for 21 pair?

204 A. Yes, sir; 21 or 22 pairs.

Q. That would be the minimum cost, wouldn't it?

A. Yes, about. They vary to a very small extent.

Q. And that is included in the 22.616 f.?

A. It is.

Q. In some of the evidence that is produced by Tréfousse they make the cost of dressing extra, increasing their cost to 27.50 f.?

A. Well, I don't think we came to that.

The GEN'L APPRAISER. There is a difference of about 3 or 4 f. between their estimate as to the cost and yours.

The WITNESS. They may have estimated in theirs some of their expenses which we have not.

The GEN'L APPRAISER. No; in the cost of skins.

The WITNESS. These estimates that I have are strict copies of our books.

By the GEN'L APPRAISER:

Q. Are you sure that the charge for dressing the skins is contained in that charge?

A. Of course it is.

205 Q. How do you know?

A. It is a habit with us when we compute the cost price of goods, we always take the skin in the hide; we never take it in rough, because we could not do it in rough.

Q. Are you sure about that?

A. I am positive of it.

Q. Let me call your attention to another point. You have said that 21 or 22 pair is the average. It has been my opinion all along about 21, although it has been disputed in several cases pointedly.

A. We have got to take a certain figure of that sort. However I have sold skins here to a party to whom I guaranteed 21 pair to the dozen.

Q. What did you say was the average cost of skins according to these figures?

A. I have not made the average.

Q. But you did state a while ago that there was an average cost according to these figures.

A. I have not made an average. I see from glancing over them there are skins from 21 f. up to 31.75 f., and I find another paper here
206 with a few dozen at 33 f. My idea in glancing over them would be about 29 f.

Q. Let me call your attention to that. If you make the price 29 f. the cost of the leather would be only about 15 f. instead of 25?

A. This is the cost of the rough skins.

Q. So much the worse then?

A. No; because it is increased by taking out all the bad skins.

Q. Taking off 3 f. for that they are then up only to 18 or 19 f.?

Mr. COOPER. Then the cost of the leather comes in?

The WITNESS. Then you have to add the tanning process.

The GEN'L APPRAISER. That is already in. You start out with 15 f.?

The WITNESS. Now, if you will allow me to make my calculation.

Mr. COOPER (to the gen'l appraiser). You have it got it mixed up.

The GEN'L . No, I am not mixed up; he is getting down now *now* to the cost of a dozen pair of gloves.

The WITNESS. I could not average that exactly. I have looked over them and I infer from them that it could be done. Now, let us
207 see: 30 f. per dozen; they will cut 21 pair, we will say; that will be 14.50 a dozen of gloves. If we add to that from 7 to 10 % for the taking out of the bad skins and leave out the losses in tanning——

The GEN'L APPRAISER. That is an element, is it? I had not heard of that before.

The WITNESS. When we buy skins there will be some skins worth perhaps 50 f. and some will not be worth 5 f. per dozen; and we have got to take out those that are not worth anything.

Mr. HALSTEAD. And then increase the cost of your raw skins 10 %?

The WITNESS. I could not say exactly on these skins what the loss is. It varies from 4 to 10 %. Some years the average loss is 4, 5, or 6 %, and other years it may be more.

Mr. HALSTEAD. Suppose, by way of fairness and to give you the first estimate, it would never exceed 10 %?

The WITNESS. I must say that I have not studied the manufact-
208 ure in that branch thoroughly enough to make an answer that I can swear to.

Mr. HALSTEAD. You know that the depreciation of the first-class skins by rejecting those that are seconds would not exceed 10 %?

The WITNESS. No, I do not think it would exceed that, although it might.

Mr. HALSTEAD. Supposing you estimate it at 10 %, and you call it at a dozen skins, cost 33 f. instead of 30 f. Now get at your depreciation.

The WITNESS. Then you have got to add 5 f. for the tanning, which would be 38 f.

The GEN'L APPRAISER. How is that?

The WITNESS. 30 f. for cost, 3 for the loss, and 5 for the tanning, that would make 38 f.

Mr. HALSTEAD. Dressing and tanning are two different things. Tanning is dyeing, is it?

The WITNESS. There is a peculiar word in French which has no equivalent in English, so I cannot give it.

209 Mr. COOPER. It is tawing?

The WITNESS. Yes, sir.

Mr. HALSTEAD. You estimate that at 5 f.?

The WITNESS. From 5 to 6 f. I think it is about 5.16 f.

Mr. HALSTEAD. That is ample, is it?

The WITNESS. Yes, sir; from 5 to 6. Some years the workmen strike, and then you don't know what the cost would be.

Mr. HALSTEAD. Then you estimate it about 5½ f.?

The WITNESS. That is about right, I suppose. That would be about 39 f. to divide by 21. That would make the skins cost about 19 f. Then there would be some other item which has escaped me, which they know of and which I do not know of.

By the GEN'L APPRAISER:

Q. Do you understand that these statements are covering the purchases of all the skins made by your house that year?

A. I do not understand.

210 Q. Do you know what proportion of them they did cover?

A. Not at all. I am sorry I didn't bring the letter that they sent me. They stated in their letter, "We send you some of our invoices for which we have no use now."

Q. The transactions in your glove are not confined to first-quality gloves, are they?

A. No, sir.

Q. And your house in London is a retail house, is it not, and wholesale both?

A. It does not retail to consumers, but it sells in very small quantities.

Q. Your house is stationed there just as Jugla's house is stationed in London?

A. Yes, sir.

Q. And does its business in the same way?

A. Not to private parties, but to the trade. The trade can buy there two or three or four pair.

Q. Your goods sent to New York are sent to your house, Luckemeyer, Kunoth & Co.?

A. Yes, sir.

211 Q. You represent them in purchases of Courvoisier gloves; they all come here on consignment?

A. On consignment; yes, sir.

212 Plaintiffs' counsel then offered, in connection with Mr. Morton's evidence just offered, the record of the proceedings before the general appraiser and his associate, the merchant appraiser, upon this appraisal at the time his (Morten's) and other evidence was received, together with a report of General Staring (a Treasury Department official), said record showing that the said report and the testimony of said Morten and others as to the price at which other gloves were sold in England was delivered under protest from the importers' counsel made to the appraising officers at

the time said testimony and report was received by them in evidence, all of which appears by the record now offered in evidence.

Defendant's counsel objected to it as immaterial and irrelevant, and also because the reason for which it is offered is not specified in either of the protests. The court excludes the evidence.

(To this ruling plaintiffs' counsel then and there duly excepted.)

213 The excluded record affected by this ruling is as follows:

"Mr. McCook. I wish to put on record the formal protest against the introduction of this evidence: First, as irrelevant, as it has no bearing upon the gloves of A. T. Stewart & Co.; second, as being utterly unreliable, and not of a character that any gentleman in this room would be willing to accept. Whenever the evidence can be favorable to the Government, it is absolutely undoubted and accepted; when it seems favorable to the importer, the person who wrote that—which shows his prejudice—always pronounces it utterly unreliable and false; and the whole character of the evidence is of such a nature that it would not for one moment be accepted in a court of law as evidence that it should be relied upon. And in the Secretary's order of the 30th of April, 1877, I wish to call attention to one clause under which this reappraisement is supposed to be going on:

214 "'When goods are not sold for consumption in the markets of the country of production, but are sold for export to countries other than the United States, the value at which such sales are made may properly be taken into consideration by the appraisers in ascertaining the value of similar goods.'

"It does not mean similar goods of the same manufacture; it means other goods of the same manufacture of an equal quality which are sold to the United States, and the bringing in of the value of these other goods is utterly irrelevant. They have shown nothing with regard to the value of the gloves imported by A. T. Stewart & Co., and we protest against the admission of any such evidence on the record."

215 Plaintiffs' Counsel. We now offer to show by the record of testimony of the persons named, and by the testimony of other witnesses, that evidence was received by the appraiser, under protest, of the value of other goods in England, and that such evidence was considered by the appraising officers.

(Objected to by defendant's counsel.)

The Court. Excluded.

(To this ruling plaintiffs' counsel then and there duly excepted.)

At this point Benjamin Tuzo was recalled by the plaintiffs, and his examination being resumed by plaintiffs' counsel, he testified:

I have found the papers I was asked to look for yesterday, namely, the paper dated September 19th. That paper was sent by General Appraiser Ketcham to the collector. I now produce it, as requested.

Paper read in evidence, and marked "Plaintiffs' Exhibit L, May 5th, 1880."

EXHIBIT L.

216 [N. Y. Cat. No. 11626.]

WAREHOUSE, JUNE 22, 1878, §6,298, PORT OF NEW YORK.

GENERAL APPRAISER'S OFFICE,
September 19, 1878.

SIR: I have examined a lot of leather gloves in connection with Hugh Auchincloss, M. A., imported by A. T. Stewart & Co., in the steamship Mosel, from Paris, April 1, 1878, and do hereby certify that, in my opinion, the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States was, and I do therefore appraise the same, as follows:

Marks.	Numbers.	Description of merchandise.	Per doz.	Total value.
A. T. S. & Co. L	§462-63	TWO CASES LEATHER GLOVES.		
			Francs.	
Part of	§462	844 42 doz. men's noirs nervures, button	50	2,100
		14.6 " § long's mens white " 2 "	51	739 50
		856 12 " " " bruns foncés " " "	52	624
		6 " ¼ " " " 3 " } 12 doz.	55	660
		6 " " " clairs " " " }		
		896 2.6 " § " men's clairs " 2 "	51	127 50
		911 fin. 5.9 "extra " clairs bords blancs " 8 "	82	471 50
		3.9 " " " " " " " 10 " } 9 " ..	92	828
		5.3 " " " blancs " " " " " }		
		920 fin. 13. " § " blancs " 2 "	50	650
		3. " ¼ " " " 3 " } 11.6 " ..	55	632 50
		8.6 " ¼ " clairs " " " }		
	§463	920 fin. 55.6 " ¼ " ardoisé " " "	55	3,052 50
		16 " ½ " clairs " 4 " } 40 " ..	60	2,400
		24 " " " ardoisé " " " }		
		30 " " " clairs bords blancs " 6 "	70	2,100
		926 33 " ¼ " mi-foncés " 3 " } 70 " ..	55	3,850
		37 " " " ardoise " " " }		
		21 " § " men's blancs " 2 "	51	1,071
		928 5 " " " " bruns " " "	53	265
		Francs		19,571 50
		Discount 6%		1,174 30
		Francs		18,397 20
Part of	§462	Balance of invoice not advanced by appraiser		1,838 20
		Francs		20,235 40
		Packing		47 45
		Francs		20,282 85

(Signed) A. P. KETCHAM,
General Appraiser.

217 (Indorsed:) No. 11626. Port of New York. General appraiser's office, september 19, 1878. A. P. Ketchum, general appraiser. General appraiser's report on reappraisement of leather gloves imported by A. T. Stewart & Co., per steamship Mosel, from Paris. Advance 22 + %. [L. S.]

218 Q. What other papers have you bearing upon this appraisement, bearing the signature of the general appraiser or upon record in his office?

A. I have only the record, which is a copy of the other two papers—a copy of the reports. It is a copy of the reports showing the invoiced value, the appraised value, and the reappraised value, and the amended reappraised value. The paper I produce, marked "Plaintiffs Exhibit M," is a record of the invoiced value, appraised value, reappraised value, and amended reappraised value.

Q. That paper, then, purports to show the invoiced value, the first appraised value, does it?

A. The invoiced value first, then the action of the appraisers before the reappraisement; then the reappraisement or action of the general appraiser (Ketcham), dated September 19th, and also the action of the general appraiser, dated October 10; also the action of the merchant appraiser, Mr. Auchincloss, dated September 19th, 1878. The paper is a record of our office, the only record we have, and is an office record of the whole
219 thing.

Plaintiffs' counsel reads the said paper in evidence. It is as follows:

EXHIBIT M.

220 [N. Y. Cat. No. 1036.]

Vol. , fol. . Per steamship Mosel. A. T. Stewart & Co. Place of exportation, Paris, April 1st, 1878. Port of shipment, . Warehouse, June 22, 1878. A. P. Ketchum, general appraiser. Hugh Auchincloss, merchant appraiser. Reappraised September 19, 1878.

Mark and number.	Description of merchandise from Ch. Fortin & Co., #6298.	Invoiced per doz.	Appraised, per doz.	Reappraised, per doz.
	TWO CASES LEATHER GLOVES.	*Francs.*	*Francs.*	*Francs.*
A. T. S. & Co., L. #462–63	844 42 doz. men's noirs nervures, buttons	40	52	50
Part of 462	14.6 " ½ longs men's white " 2 "	41	53	51
	856 12 " " " bruns foncés " " "	42	54	52
	6 " ¼ " " " " 3 " } 12 doz.	45	57	55
	6 " " " clairs " " " }			
	896 2.6 " ½ " men's clairs " 2 "	41	53	51
	911 fin. 5.9 " extra " clairs bords blancs " 8 "	58	82	82
	3.9 " " " " " " 10 " } 9 "	68	92	92
	5.3 " " " blancs " " " 10 " }			
	920 fin. 13 " ⅛ " " " 2 "	40	52	50
	3 " ¼ " " " 3 " } 11.6 "	45	57	55
	8.6 " ¼ " clairs " " " }			
#463	920 fin. 55.6 " ¼ " ardoisé " " "	45	57	55
	16 " ⅓ " clairs " 4 " } 40 "	48	62	60
	24 " " " ardoisé " " " }			
	30 " " " clairs bords blancs " 6 "	54	72	70
	926 33 " ½ " mi-foncés " 3 " } 70 "	45	57	55
	38 " " " ardoisé " " " }			
	22 " ⅛ " men's blancs " 2 "	41	53	51
	928 5 " " " " bruns " " "	43	55	53
	Francs	15,667.50	20,149.50	19,571.50
	Discount. 6 %	940.05	1,208	1,174.30
	Francs	14,727.45	18,940.50	18,397.20
Part of 462	Balance of invoice not adv'ed by appraiser	1,838.20	1,838.20	1,838.20
	Francs	16,565.65	20,778.70	20,235.40
	Packing	47.45	47.45	47.45
	Francs	16,613.10	20,826.15	20,282.85

Chgs., 40; com., 3 %.
Advance by general appraiser, 22 %. Cert., #10.
Merchant appraiser sustains invoice.
For general appraiser's amended report see other side.

221 Mark and number.	Description of merchandise, October 10, 1878.								Invoiced.	Appraised.	Reappraised, per doz.
											Francs.
Part of 462	844	42	doz.	men's noirs		nervures, buttons					47
		14.6	"	½ longs	men's white		"	2 "			48
	856	12	"	"	" brunes foncés		"	" "			49
		6	"	¾ "	" "		"	3 "			
		6	"	"	" clairs		"	" "	12doz.		52
	896	2.6	"	½	" men's clairs		"	2 "			48
	911 fin.	5.9	"	extra	" clairs bords blancs		"	8 "			79
		3.9	"	"	" " "		"	10 "			
		5.3	"	"	" blancs "	" "	"	" "	9 "		89
	920 fin.	13	"	½	" "		"	2 "			47
		3	"	¾	" "		"	3 "			
		8.6	"	"	" clairs		"	3 "	11.6 "		52
§463	920 fin.	55.6	"	"	" ardoisé		"	3 "			52
		16	"	½	" clairs		"	4 "			
		24	"	"	" ardoisé		"	" "	40 "		57
		30	"	"	" clairs bords blancs		"	6 "			67
	926	33	"	¼	" mi-foncés		"	3 "			
		38	"	"	" ardoisé		"	" "	70 "		52
		22	"	½	" men's blancs		"	2 "			48
	928	5	"	"	" brun		"	" "			50
	Francs										18,540.25
	Discount, 6 %										1,112.40
	Francs										17,427.85
Part of 462	Balance of invoice not adv'c'd by appraiser										1,838.20
	Francs										19,266.05
	Packing										47.45
	Francs										19,313.50

Advance, $16\frac{2}{10}$ %.
Collector coincides with general appraiser, Oct. 10, 1878.
Copy Pl'ffs' Exh. M, April 5, '80.

222 Q. What is the date on which this invoice came into the office?

A. August 12th, and it went down to the collector September 20th. It was received back from the collector October 10th, and went again back to the collector October 10th. These reports bearing date prior to October 10th all went with the invoices to the collector on September 20th.

Q. Was there a letter sent from the general appraiser to the collector, September 19th, with this report?

A. Yes.

Q. Is there any other correspondence recorded in your office respecting this invoice or this appraisement except this letter of October 19th that you referred to?

A. Not that I know of.

Cross-examined by defendant's counsel:

Q. I understand that the final report of October 10th was accompanied by this letter, which has already been put in and marked "Plaintiffs' Exhibit F."

A. Yes, of October 10th.

I suppose it is the Plaintiffs' Exhibit L. It was accompanied by a letter from General Appraiser Ketcham, which is marked "Plaintiffs' Exhibit F."

223 A. No, sir; this is it.

Q. Which paper accompanied the letter of General Appraiser Ketcham, which is marked "Plaintiffs' Exhibit F"?

A. The paper marked "Exhibit D," the paper attached to the invoice. That is the one which accompanied General Appraiser Ketcham's letter of October 10th, marked "Plaintiffs' Exhibit F."

Q. What is the paper marked "Plaintiffs' Exhibit L"?

A. It is the first report of the general appraiser, marking the price 52 francs, dated September 19th.

Q. Where does that come from to this court?

A. It comes from our office, from the office of the general-appraiser.

Q. It is a part of the file of the general appraiser's office?

A. We keep it as a minute, yes, or memorandum. The other paper, which is marked "Plaintiffs' Exhibit D," comes from the files of the custom-house.

Q. Since what date has this paper dated September 19th and marked "Plaintiffs' Exhibit L" been kept as a minute at the appraiser's office?

A. Since October 10th.

224 Q. And prior to sending of the report taken October 10th?

A. No, sir.

Q. This (Exhibit L) was received at the appraiser's office and placed there as a minute before this paper was sent to the collector's office?

A. Yes, sir.

Redirect examination:

Q. Referring to the paper marked "Plaintiffs Exhibit M," and dated September 19th, 1878, and to Plaintiff's Exhibit L, dated September 19th, 1878, will you please state which of those two papers came back from the collector to the general appraiser, and when?

A. Exhibit L came back from the collector to the general appraiser on the 10th of October.

Q. Exhibit L had left your office previous to September 20th?

A. It did. It was sent in the regular course of business to the collector from our office. Exhibit M was never sent to the collector.

Q. When was the first page of that completely prepared?

A. On the 19th of September.

Q. When was Plaintiffs' Exhibit M, prepared, referring to the second page?

A. On the 10th of October.

225 Q. Was the second page of that prepared after Exhibit L had been received back from the collector?

A. It was.

Q. Now, when Exhibit L was received back from the collector, on the 10th of October, was there a letter received with it marked "Exhibit E?"

A. There was.

Q. And was or was not this second page of Exhibit M prepared in compliance with that letter?

A. I don't know. That was the general appraiser who made those figures?

Q. But it was all done that day?

A. Yes, sir; the same day Exhibit F was sent off.

EDWIN A. MERRITT was then called on behalf of plaintiffs, and being sworn and examined testified substantially as follows:

I was the collector of the port of New York during the importation and appraisements in question; that is to say, I went into office July 20th, 1878.

Q. On or about September 20th you received from the general appraiser, Ketcham, and from Merchant Appraiser Auchincloss, did you not,
226 each a separate report as to the result of their action upon the appraisements in question, namely, Exhibit C and Exhibit L? Please state whether you did or not.

DEFENDANT'S COUNSEL. I object to the question.

The COURT. Better strike out the separate report. You can ask him, "Did you receive, about September 20th, from the general appraiser and from Merchant Appraiser Auchinloss the papers herewith handed to you, marked Plaintiffs Exhibits C & L?"

(Plaintiffs counsel then and there duly excepted to the refusal of the court to permit the question to be asked as stated by plaintiffs' counsel.)

The question was then asked the witness by plaintiffs counsel:

Q. On or about September 20th did you receive from Merchant Appraiser Hugh Auchincloss the papers marked "Exhibit C" and "Plaintiffs' Exhibit C." There are two Exhibits C, the merchant oath and the other paper signed by him. Did you receive this (showing) on or about September 20th?

A. I think I did.

227 Q. At the same time did you receive Plaintiffs' Exhibit L subscribed by General Appraiser Ketcham (paper handed witness)?

A. I did.

Q. Up to that time had you received any other report from either General Appraiser Ketcham or Merchant Appraiser Auchincloss on this importation?

A. Not to my knowledge.

Q. What was the next paper that you received from General Appraiser Ketcham in regard to this importation; is it among these papers?

A. It is; it is Plaintiffs' Exhibit D.

Q. Now, sir, intermediate the receipt of these two papers by you did you have any conversation in respect to this importation?

A. I did.

Q. Prior to your final action upon this invoice were proceedings had before you in order to aid you in determining as to market value?

A. No.

Q. Were there any proceedings at any time had before you in respect to fixing the values upon which duty should be liquidated upon
228 this invoice?

A. No; I might state, however, that I received a brief from the attorneys of the plaintiffs.

Q. Are these the only proceedings?

A. That is all.

Q. Before you had finally liquidated this entry, was a suggestion made to you, in behalf of the plaintiffs, on the subject of seizing these goods? Were you asked by Mr. Libbey, or anybody in his behalf, to seize these goods, so that they might be proceeded against for forfeiture?

A. I cannot at this moment recall. I think some conversation was had

in reference to it, but I do not recall any specific request. I am sure such a request in writing would have been answered.

Q. I do not mean in writing, but verbally. In the course of conversation was it not suggested to you? Were you asked at any time by the plaintiffs, or in their behalf by Mr. Libbey or his counsel?

A. I do not recall it; I may possibly have been so, but I do not recollect.

229 Q. If you do not recollect it, allow me to refresh your recollection. Do you not now recollect a conversation either with Mr. Libbey or his counsel, Col'l McCook, at the general appraiser's office, in respect to the seizure of these goods, as a means of obtaining a fair result, or otherwise; do you not recall a suggestion of that kind made to you personally?

A. I recollect meeting Mr. McCook at the appraiser's office, but my impression now is that it was subsequent to the determination of this case.

Q. Was it not when the appraisement was going on?

A. No, sir; I do not recollect being present. I cannot fix the date precisely—whether it was before the duties were paid or not. I was not present at the hearing. There was a great deal said and suggested, I presume, as in all such cases, but I cannot fix any specific date or any specific proposition. I am very certain I was not present at the hearing before

230 the general appraiser and the merchant appraiser. It would have been better if I had been.

Q. Did you have a conversation with the general appraiser in regard to your action upon these invoices?

A. I shall answer that question in the negative.

Q. You did not?

A. In regard to my action?

Q. Well, did you have a conversation or conversations with the general appraiser in respect to the rate or value at which ladies' kid gloves were to be charged? If you did have such conversation, was there one or more than one?

A. The question is so direct as to liquidation, as to fixing values, I shall have to answer that in the negative also.

Q. Did you have any conversation in regard to the testimony and proceedings in this invoice?

A. I did. I do not recollect but a single occasion; that was at the custom-house, and I should say was some time subsequent to my receiving the report and evidence, and before the final determination of the case.

231 Q. Was it understood between you and Mr. Ketcham, as the result of that conversation, that there should be a letter written by you to Mr. Ketcham and a letter written by Mr. Ketcham to you?

A. No, sir.

Q. Was there any understanding between you?

A. With, perhaps, this qualification; I may have suggested that I should possibly refer the papers back.

Q. That conversation was prior to your writing a letter sent by you, dated October 10th, marked "Plaintiffs' Exhibit E," was it not?

A. Yes, sir; I suppose that is the letter.

Q. Now, did you try to reconcile, before this letter was written, a difference of views between yourself and Mr. Ketcham or any person?

A. I did not.

Q. Did you converse upon the subject whether the dutiable value of these goods should be 42, 49, 52 francs, or any other figure?

A. I should say no as to any definite figure.

Q. I say "or any other figure."

A. No, sir.

Q. Did you not converse upon the subject of what should be the dutiable value of these goods?

A. No, sir.

232 Q. Was not the subject of whether they were invoiced too low or not mentioned between you?

A. I should say yes to that; and should add that from my examination of the whole case I concluded that the advance—I should be compelled, if left to myself, free from the rule of the Department, to so advance the goods as to be beyond a penalty in any view of the case which I would be compelled to consider, either the cost of the goods of the same kind sold in the market or similar goods, or the cost of manufacture.

Q. What were the proceedings held before you had arrived at that mental determination, and before this conversation that you refer to; what was before you officially?

Q. What was before you in respect to this invoice before this conversation?

A. There was the invoice and these two reports which are attached, a written communication from the general appraiser, reviewing the evidence and giving his reasons for his conclusions. Nothing further, ex-

233 cept the briefs submitted by the attorneys referred to.

Q. Was there not a copy of the testimony, together with a large number of exhibits?

A. I say I had the testimony and all that pertained to the examination, as it was agreed. The importers, with this brief, presented a copy of the minutes taken by a stenographer of the importers, which, being tabulated for the purpose of examination, was used to some extent. The two books which are now before me, I should say they are the same two books.

(At this point the said two books are marked, for identification, "Plaintiffs' Exhibit X," and are hereinafter referred to.)

Q. Then, did you not have before you certain tabulated statements that were used before the appraisers' board, exhibiting the cost of the various manufactures of gloves?

A. Given in the evidence? Included as a part of the evidence?

Q. Yes.

A. I had everything that was ordinarily transmitted, covering

234 all matters of testimony and tabulated statements made. I presume it was all embraced in this mass of evidence. I am very confident I read it thoroughly. It is possible some paper might have escaped me.

Q. Prior to your final action what was your action other than the letter of October 10th, if any, on this evidence, proceedings, and papers?

A. No action except the examination of the papers.

Q. Did you make a formal reference of this matter again to the general appraiser, requesting a further report, other than this letter?

A. Oh, no.

Q. Did you make any personal examination of the gloves in question?

A. I think I saw the samples retained in the appraiser's office, but I am not an expert; I think that was subsequent to the termination of the case; I have never seen them with reference to passing upon this case at all; that was October 10th, I presume.

Q. With reference to passing upon this case, prior to your action, had you had the samples of this particular invoice before you?

235 A. I am not quite certain whether there were samples transmitted of these goods or not; I am certain I saw them in the custom-house at one time, but whether before the termination or not I cannot say; as I understand it, there were three cases pending, which by an agreement, as I understand, were included, which covered the mass of evidence, and I saw samples of the various goods, but I could not identify them.

Q. I speak only of this invoice by the Mosel.

A. I understand.

Q. But the others were other importations of other importers.

A. I say I cannot certify and am not an expert; other appraisers were acting there.

Q. It was not Mr. Auchincloss?

A. I cannot say whether I saw the samples of this particular importation before the termination of the examination or not.

Q. At the time these proceedings and papers came from the general appraiser's office in this case of the Mosel to you there were no samples came with them?

236 A. I think not; I don't recollect, but I think not; I made no examination of the samples prior to October 10th, with the view of acting on this particular invoice.

Q. Now, did you have any conversation with any other officer of the Treasury Department than Mr. Ketcham respecting the dutiable value of kid gloves at or about this time?

A. I presume I did.

Q. Will you please state with whom?

A. I think I answered enquiries or had some conversation with the supervising special agent, Mr. Single.

Q. And Mr. Williams, didn't you?

A. Yes; I think so; Mr. Williams is a special agent of the Treasury Department.

Q. And with the Secretary?

A. No, sir.

Q. With any other officers?

A. Officers in my department; I had some conversation with my special deputy, Balch; I presume with Mr. Phelps, who was then the deputy in charge of the law division; perhaps with others. I did not

237 see these cases of goods.

Q. Which conversation was first, that with Single or that with Williams?

A. I cannot tell you.

Q. How many conversations did you have with Mr. Single?

A. I cannot tell you that.

Q. How many with Mr. Williams?

A. This case became a sort of noted case, and a great many dropped in.

Q. Did you talk with Mr. Alexander Morten, the agent of the Government?

A. I think not until after this case was disposed of.

Q. After October 10th?

A. I cannot say as to date, but he was an entire stranger to me until subsequently; I then did have a conversation with him in regard to some evidence produced subsequent to this case.

Q. What was the coversation with Mr. Williams?

A. I cannot pretend to detail it.

Q. What was the substance of it?

A. I think on one occasion there had been some testimony given
238 on the proceedings, and if I recollect right there was some protest made by the attorney of the importers, and I asked some question about that evidence; my impression is that I inquired about a witness who, I think, resides in Philadelphia or some place; I have forgotten his name.

Q. Whittington?

A. Yes; I made some enquiries as to his character and standing.

Q. Had you read Mr. Whittington's evidence?

A. I think I had before I saw Mr. Williams at all.

Q. Mr. Whittington's evidence was before you in the book marked for indentification "Book B"?

A. If it is there it was before me.

PLAINTIFFS' COUNSEL. We now offer in evidence the record of Mr. Whittington's evidence laid before the collector.

The COURT. Ruled out.

(To this ruling plaintiffs' counsel then and there duly excepted.)

The excluded record affected by this ruling is as follows:

239 B. F. WHITTINGTON, being duly sworn, testifies:

By the GENERAL APPRAISER:

Q. You are connected with the house of Read & Co., of Philadelphia?

A. Yes.

Q. You have charge of their glove department?

A. Yes, sir.

Q. And you have been familiar with kid gloves for many years?

A. Yes, sir.

Q. In your business?

A. Yes, sir.

Q. You testified in this room on former occasions in reference to the foreign market for gloves that come to this country?

A. Yes, sir.

Q. Trefousse, Perinot, etc.?

A. Yes, sir.

Q. Trefousse glove particularly?

A. Yes.

Q. Have you been to Europe recently?

A. Yes, sir.

240 Q. Just returned?

A. Yes; on Sunday afternoon.

Q. Have you any information with regard to the foreign market value of the kind of first quality of gloves that come to this country?

A. Yes.

Q. Trefousse, for instance, and Perinot?

A. The Trefousse, not Perinot. I have the Courvoisier.

Q. Very well, then; of those makes that you mention give us the benefit of that information.

A. The Paris price of the Courvoisier glove is 51 francs; that is white welt.

Q. That relates to the two-button dark colors ladies' gloves?

A. Yes, sir; 51 francs for white welts; that is, known as white tops Self welts generally cost one franc a dozen more.

Q. How did you satisfy yourself on that price for the Courvosier glove?

241 A. By the statement of the London buyers, and also by the purchase of a half a dozen gloves from the London house, which is higher than the Paris price.

Q. What did you pay for them?

A. 45 shillings.

Q. You conversed with the buyers in London of the Courvosier glove?

A. Yes, sir; I have the sample of gloves here.

Q. Of the Courvoisier?

A. Yes.

Q. I will ask for those in a moment. Did you hear of any lower price of the Courvoisier than 51 francs?

A. No, sir; that was the general price.

Q. Less what discount?

A. 6 per cent.

Q. Have you any information with reference to the Trefousse glove?

A. Yes, sir; the Trefousse glove, that is sold to England at 52 francs.

Q. Less what discount?

A. 6 per cent.

242 Q. Do you know whether or not I. & R. Morley take all the Trefousse gloves that go to London?

A. Yes, sir; that is, according to their statement and also the statement of other parties.

Q. They, then, are the exclusive receivers of that glove for London?

A. Yes, sir.

Q. Do you know the extent of their annual importation for that glove?

A. Not of that glove; I do not. There is not as much demand for that glove at present as there was a few years back.

Q. Have you any samples of that London glove?

A. Yes, sir.

Q. We would like to have you produce them, and also the samples of the Courvoisier glove that you speak of.

(Produces samples.)

Q. These are the Courvoisier gloves?

A. Yes, sir.

Q. And this single pair is the Trefousse?

A. Yes, sir.

243 By Mr. CONSTABLE:

Q. How much better do you consider the Trefousse gloves that are sent to London than the glove that is sent to New York?

A. I consider the gloves that are sent to New York better than the gloves that are sent to London. The general impression in England is the same and in Paris the same. The general impression of the manufacturers in Paris is that the glove sent to America is better than that sent to London.

Q. The glove sent to London is better than the glove sent to New York?

A. No, sir; the glove that comes to America is better than the glove that is sent to England.

By Mr. LIBBAY:

Q. Where did you get that information?

A. From various manufacturers in Paris; I can't name them.

By GENERAL APPRAISER:

Q. I want you to examine these two lots that I have taken by
244 chance from the carton and tell me how, in your opinion, they compare with the same of the Trefousse glove that you brought from London, and also the samples of the Courvoisier glove that you have here.

(Examines gloves.)

Q. I ask you to examine the parcel of the black gloves of the Trefousse?

A. These black gloves of Trefousse, from what I can recollect of the quality I saw, they run much better than those I saw in London. One lot there is stamped with the Trefousse name on them, and it is a very difficult matter to make a distinction between those two half dozen, in my judgment.

Q. Of the light colors?

A. Have you any colored of those?

Q. No; we have not of the present invoice.

A. The selection in regard to colors, they must select the ski
245 as free from all imperfections; they generally run a finer grade a a rule.

Q. How do you understand these light gloves which you have examined to compare with the London Trefousse glove?

A. These light ones compare very favorably; they seem very much like them. A glove of that description, 3, 4, or 5 francs, in a first quality of glove. It is a very difficult matter to determine the price between 3 to 5 francs.

Q. This glove that you hand me, is that the London Trefousse glove or not?

A. This is the No. 2 quality; this is the glove which is sold to the Bon Marché by the Trefousse.

Q. Where did you get it?

A. Purchased it from the Bon Marché. They sold those goods at 3 francs, 75 per pair; and what I understood from several manufacturers, that is what they pay for them. They pay 3 or 4 francs, less 6
246 per cent., and I understand recently they make another discount of 4 per cent., making 10 per cent.

Q. Have you a sample of the London Trefousse glove?
A. Yes, sir.

By Mr. CONSTABLE:

Q. You don't know really as to the cost of this, except what you understood from other parties?
A. From the manufacturers.

By GENERAL APPRAISER:

Q. Did you converse with the manufacturers as to the prices charged the Bon Marché glove?
A. Yes, sir.
Q. With whom did you converse?
A. Mr. Cheus, who is now manufacturing the glove; and there is one or two other manufacturers who said to me they didn't wish to have their names mentioned.
Q. This purple glove is the London Trefousse glove?
A. Yes, sir.
Q. How do you find this glove to compare with the samples we have here of the Trefousse glove received at this port?
247 A. There are no dark colors here to compare with it.
Q. Have you examined some of the Alexander gloves this morning?
A. Yes.
Q. The gloves that are retained up-stairs?
A. Yes, sir.
Q. Are there any dark colors there?
A. Yes.
Q. How do you understand this London glove to compare in quality with those that you examined—the Alexander?
A. Very favorably.
Q. What do you mean by very favorably?
A. The quality is very nearly alike; the way the goods are dressed; the general appearance of those goods, resemble the Courvoisier glove very much. The dressing of the Trefousse glove seems a distinct dressing from any other glove on the market. They are recognized as the largest
248 manufacturers of gloves in the world, and also doing a large business, and in consequence have a world-wide reputation, and, of course, the first quality of gloves bearing their name is well known.
Q. Did you hand me the sample of the Courvoisier glove?
A. Yes, sir.
Q. How do those goods, which come, as I understand you, from London, compare with both the Alexander and Trefousse gloves?
A. I consider them about the same quality; they are about the same grade of glove, in my estimation. One manufacturer may have gloves at 58 francs and another at 55, and it would be a difficult matter to make a distinction.
Q. This white edge is what you call the welt?
A. Yes, sir.
Q. And the dark edge, such as these black gloves show, what do you call that?

A. That is designated as the self welt. Sometimes the manu-
249 facturers in a large order will make them without additional cost.

Q. That is referred to as the one franc extra?

A. It is; the white cuff that is put on the glove.

Q. Which is the most expensive, with the white or without it?

A. The glove which is called self welts.

Q. The gloves that come to this port, are they self welts or otherwise?

A. Self welts. There some few come here white welts.

Q. Will you allow us to have these samples to use in evidence in this case?

A. Yes, sir.

Q. Have you samples of any other gloves?

A. I have some of the Roullion glove of No. 2 quality, formerly designated as the "intermedia'e," only the B quality.

Q. That is the same glove that Harris imports?

A. Yes, sir.

Q. You have only samples of the B quality?

250 A. Yes, sir; but not with me. I have samples of the first quality, but they are not with me.

Q. Are they in Philadelphia?

A. Yes, sir.

Q. You meant to bring them with you?

A. Yes, sir.

Q. Will you send them on?

A. Yes. This is the sample of quality B. It would be a very difficult matter even to tell some of those.

Q. What is the price of this quality?

A. 42 francs, with a rise of 4 francs from two to three buttons and after that 5 francs a dozen; and after the selection is made of those the price is 37 francs, with the same rise for each button.

Q. What is the price for the first quality?

A. 53 francs in these goods in white welts.

Q. Less 8 per cent.?

A. Yes, sir.

Q. How do you understand the first quality of Roullion glove
251 to compare with the first quality in those other gloves received here, the Alexander and Trefousse?

A. They are all considered about the same grade of goods.

Q. How do you consider them?

A. Also the same.

Q. You mean that these gloves received here are about the same quality and grade?

A. I consider them about the same.

Q. But how do the different samples that you have in Philadelphia compare with these gloves that are here?

A. With the samples of the Roullion?

Q. Yes; with the first quality.

A. They are about the same leather.

Q. You understand them to be the same leather?

A. Yes, sir; the Jouvin, and Roullion, and Calvat—you will find the appearance of the gloves very nearly alike.

Q. We will have those samples here to be passed upon?

A. Sometimes a manufacturer will make a glove that is dressed
252 that will represent a peculiar identity. With kid gloves in Paris, they have what they call a narrow cut. The Courvoisier glove is generally cut that way, and the Fortin and Perinot glove.

Q. Those different styles do not affect the general market value?

A. No, sir; but the general quality is about the same.

Q. The sample that you will send on of the Roullion glove?

A. That represents a sample of a large purchase of the London house of Roullion, made by Keefe, Son & Co.

Q. A recent purchase?

A. Dated the 1st of May.

Q. What was the quantity?

A. The invoice amounted to about 60,000 francs for that purchase of one-button and two-button gloves.

Q. What was the discount?

A. 8 per cent.

Q. What was the price?

A. The price for one button gloves was 48 francs; for two but-
253 ton 53 francs, and for two button embroidered was 54 francs 50, and the rise per button was 5 francs per dozen.

Q. What is the rise on all the other quality of gloves?

A. The Trefousse, Perinot, etc., rise about six francs a dozen. That was also stated by the parties of whom the gloves were received by.

Q. Did you find anywhere, any first quality gloves, a rise of less than 5 francs to the button in the first quality?

A. Not in the quality equal to these gloves here; no, sir.

By Mr. CLARK:

Q. When did you go to Europe?

A. I left Philadelphia on the 6th of June.

Q. What was your object in going?

A. My object in going to Europe was to look after the interest of the house I am connected with; also at the solicitation of a great many of these gentlemen here. They stated here on a former appraisement
254 that I was not well enough posted on the market, and it would be better for me to go and see how the market was. That was the views of the importers. I thought I would accommodate them and also attend to the business in which I was connected.

Q. You say that one reason of your going to Europe was the remark made by the importers?

A. Oh, no, sir; I put it in that shape. A great many of the importers here had stated that I was not well enough posted on the market, not having been abroad for so many years, and they urged me to go—one or two of them.

By Mr. CONSTABLE:

Q. Will you state who they were?

A. One was Mr. Perrin; I cannot recollect who they all were.

Q. Whether it is these gentlemen who import these gloves, or whether it was some outside jobber?

255 A. No, sir; it was the gentlemen interested. It was done in a joking and friendly way. I have no personal feeling in this matter whatever. There was a case in Philadelphia where the parties had stated to me that these other houses were getting goods through, and they urged me to go on, and I told them I would do it if I could. We were being gradually squeezed out of the business by this system.

By Mr. CLARK:

Q. At whose solicitation was it that you went abroad, in part?

The GENERAL APPRAISER. It is my duty to protect the witness here. If there is any question you object to and do not wish to answer, you are at liberty to say so. I do not want to interpose an objection. He has answered the question that he went there both for his own business and for the purpose of making these inquiries. If you want to show
256 that he went there for the purpose of working up the case for the Government I do not think it is a proper line to pursue.

Mr. WILLIAMS. The Government did not send him over there.

The WITNESS. We have several interests on the other side that we represent, and, of course, we must look after them.

Q. In examining into the price of kid gloves do you consider you were looking after the interests of your firm?

A. Yes, sir.

Q. It was the interests of your firm, and not the solicitations of these merchants in New York, that you went abroad?

A. No, sir; that was in a joking way that I put that.

Q. When did you first make inquiry, after you got abroad, in respect to the price of Trefousse glove?

A. I made inquiries—I can't give the exact date; it was probably about the latter end of June.

Q. Where?

257 A. In Paris; I did not receive the information at that time; and also received information after that in Grenoble—about a week after.

Q. Where did you enquire in Paris?

A. That I decline to give. I have produced the sample and I have stated where I received that sample, also the sample of the other glove.

Q. Which sample do you refer to?

A. The Trefousse; the quality designated as "Qualitié Trefousse."

Q. Point it out to me.

A. The purple glove.

Q. You got that in Paris?

A. No, sir; I got it in London.

Q. What glove did you get in Paris?

A. The Bon Marche; designated as the Fousie.

Q. You bought that at the Bon Marche?

A. Yes, sir.

Q. At what price?

A. Three francs seventy-five centimes.

Q. Anyone could go there and buy that glove at that price?

A. Yes, sir.

258 Q. And this is a fair sample of the gloves?

A. Yes, sir.

Q. Did you buy more than one pair?

A. Only one pair.

Q. Then you went to Grenoble?

A. Yes, sir.

Q. I understand this is the retail price?

A. Yes, sir, the retail price. I understand from the manufacturers that they sell the goods for exactly *for* what they pay for them net.

Q. From whom?

A. From two or three manufacturers. The profit they make is represented by the discount.

Q. You didn't understand that from Mr. Trefousse?

A. No, sir.

Q. Nor any one connected with his manufactory?

A. That I decline to give.

Q. Did you understand it from the Bon Marche, or any one connected with that establishment?

A. No, sir; I don't know any one connected with the Bon Marche.

259 Q. When you say "by two or three manufacturers," do you mean rival establishments to Trefousse?

A. They are manufacturers, I know. One is Depres, of Paris. Gailliard is the man that represents the department at the present moment, and there are one or two others.

Q. The price that Trefousse sells these gloves for, you have only this hearsay?

A. That is all I have in regard to that quality of glove.

Q. Now come to the information you got at Grenoble; that was early in July?

A. That was in July. I could give the exact date, but I can't give it now.

Q. You went to Grenoble?

A. Yes, sir; the early part of July.

Q. And you sought there for information in respect to the Trefousse glove?

A. Not wholly on that account; I went also to represent the house.

Q. When there you sought for information of the Trefousse glove?

A. Yes, sir.

260 Q. What steps did you take to find out about the Trefousse glove there.

A. Merely as to the price.

Q. What did you do?

A. Parties whom we represent gave me what information they could in regard to the price. The party had already sent a price-list to us. That price-list was produced during the time of the first appraisement that took place here. The price-list was sent to Treton and Company.

Q. You don't mean a price-list?

A. Yes, sir; a price-list of the Trefousse glove; a letter rather, having the prices in the letter. The letter has already been produced here.

Q. You mean the letter with the name cut out of it?

A. Yes, sir.

Q. That was the party who received that letter—was the one you went to?

A. The successor to that party.

261 Q. You decline to give the name of that party now?

A. I decline to give that at the present moment. I can give you their reply—their answer. I don't think it has ever been produced here.

By GENERAL APPRAISER:

Q. Have you got it?

A. (Produces letter.) This is the letter written by Treton, by the party to Trefousse, asking for the price-list.

Q. This is the letter which contains the inquiry to which the letter of Trefousse was an answer—a copy of the inquiry?

A. Yes, sir.

By Mr. CLARK:

Q. Was that the original?

A. No, sir; they did not keep a copy of it.

Mr. CLARK. Then if they didn't keep a copy, and this is not the original, I don't see how it can go in.

The GENERAL APPRAISER. I do not care anything about it, except there is one statement here which I think is unobjectionable.

262 By GENERAL APPRAISER:

Q. You received this letter from the parties whose names are signed to it?

A. Yes, sir.

Q. They are the successors of Craton?

A. Yes, sir.

Q. This is a letter to you?

A. Yes, sir; this is a letter by the commission merchants that represent them as their agents in Philadelphia. One of the parties who is connected with the concern is a manufacturer.

Q. Did you see the bands on the gloves that were imported at London—the Trefousse glove?

A. No; I didn't notice the bands.

Q. The bands that we have here on the Trefousse glove are marked with the gold medal stamp, and have the name of Trefousse on them?

A. Yes, sir; the signature in the London house was different from the signature here. The London signature is red, and the Ameri-

263 can signature is blue.

By Mr. CLARK:

Q. Did you attempt to buy any Trefousse gloves in Grenoble?

A. No, sir.

Q. Did you get any information from any one there who had bought them?

A. No, sir.

Q. You really didn't get any information at Grenoble except hearsay?

A. That is all in Grenoble.

Q. It came from this house of successors to Craton; it came from the house of Francois, Henon & Greder?

A. Yes, sir.

Q. What did they tell you?

A. They stated that the Trefousse gloves could not possibly be made for

less than 55 francs per dozen. They could not be offered on the market for less than 55 francs. Since then the first quality has fallen from 3 to 4 francs a dozen.

Q. Did they say anything about what they could be made for?

264 A. No, sir.

Q. When they said they could not be offered for less than 55 francs what did you infer from that?

A. That that was the mere cost of the goods.

Q. Not that that was the cost and the profit added to it?

A. No, sir; of course they would not sell goods for cost—not as a rule, I don't think. The price quoted was the price which represents the market value.

Q. Did you buy any gloves at Grenoble?

A. Yes, sir.

Q. What quantity?

A. I bought some Francois Calvat quality, and some Armond Calvat, and some other qualities. Some qualities designated as the Fousee quality, and some qualities as the intermediary. As soon as our invoices come along, if you gentlemen want to see the prices, you can have the opportunity.

Q. How large a quantity did you buy?

265 A. I could not tell at the present moment.

Q. About how many of the Francois Calvat quality?

A. A great many of those will be consigned to us; I can't tell how many.

Q. What quantity did you buy, if any?

A. Probably from 12 to 15 hundred dozen in Grenoble.

Q. Of the Calvat quality?

A. No, sir; not of that quality.

Q. How many of that quality?

A. That I decline to give; any of the gentlemen can have an opportunity to see the invoice when it comes.

Q. Can you tell about the quantity?

A. No, sir.

Q. All your purchases together was 12 or 15 hundred dozen?

A. Yes, sir.

Q. Of all qualities?

A. Yes, sir.

Q. Didn't you regard your purchases as made at the market value?

A. Yes, sir; I do.

Q. Then you have some information, haven't you, as to the

266 market value of the Trefousse gloves other than this hearsay?

A. I have produced it here.

Q. I mean at Grenoble; you bought similar gloves there; did you buy any gloves that you regarded as similar to the Trefousse quality?

A. They consider the Francois Calvat—it is not as high a price as the Trefousse glove; those samples have been produced here—the Francois Calvat.

Q. Where those gloves that you bought kid gloves?

A. In Grenoble? Yes, sir.

Q. In pursuit of information did you go anywhere else to inquire the price of the Trefousse gloves?

A. In regard to my business we have other markets that I also purchased gloves for.

Q. Did you buy what you call first quality of gloves?

A. No, sir; I consider all the Courvoisier and Fortin and Trefousse alike.

Q. Did you buy any of those?

267 A. No, sir.

Q. Did you try to buy any?

A. No, sir.

Q. You didn't try to buy any except the Calvat?

A. I tried to buy a Francois Calvat at a price; I made an offer for 25,000 dozen at 42 francs, with the rise of 3 francs for each additional button.

Q. And he declined it?

A. He positively refused to deliver them.

Q. Did you make that offer to any body else?

A. No, sir.

Q. Do you suppose there is a manufacturer in Grenoble who would take a contract for gloves equal to the Trefousse glove at that price?

A. I don't know what they would do.

Q. What do you think about it?

A. I don't know; I can't tell; they might, and might not.

Q. If they did, that would be some evidence of market value, wouldn't it?

268 A. I don't know; it might do to sustain this present price of invoicing goods.

Q. I suppose it was a man that was not sending to America at all?

A. I don't know of anybody that would; they could very easily get another manufacturer to make the gloves for them.

Q. You didn't try to see whether they would?

A. I put the question to a gentleman, being in Genoble. I asked him who would sell the first quality of gloves at 42 francs, and he said he did not know; he said he could not make that quantity. That was said in the presence of the manufacturer at Grenoble.

Q. Would you be glad to make a contract for that quantity of gloves with a rise of 3 francs?

A. I am not making contracts at the present moment.

Q. Then it was not a bona fide offer to Calvat?

A. Yes, sir, it was a bona fide offer at the time, because I could

269 have marketed those gloves in England.

Q. You don't care to make any such contract now?

A. Not at the present moment. I might to Francois Calvat, because I could market the goods in England.

Q. You regard his gloves, then, as better than Trefousse and Perinots and Alexandre?

A. I do not. No, sir; I do not consider theirs as good; not quite; he is always 2 or 3 francs less than those other manufacturers. You will find that in the quotations.

Q. Isn't it a fact that Mr. Calvat is asking so high a price for his goods that he has lost his English trade entirely?

A. No, sir; I don't think he has.

Q. Isn't his principal production consigned to Australia?

A. No; I don't know that they are consigned there. I know a great many of them go there. Dent & Alcroft get a good many of them.

Q. At the present time?

A. Yes, sir.

Q. Do you know about that?

A. Yes, sir.

Q. Do you know that they do?

270 A. No; I would not state positively, but I know that the demand for high-price gloves in England is very limited as compared with former years. That is owing to the present depression.

Q. Where did you go from Grenoble?

A. To Lyons.

Q. You did nothing in respect to gloves there?

A. No, sir.

Q. Where did you go next that you made inquiries in respect to gloves?

A. In regard to gloves I went to Vienna.

Q. That had nothing to do with this class of gloves that we have under consideration?

A. No; while in Lyons I gave the American consul there the copies of the prices of the Roullion gloves.

Q. Where did you get those prices?

A. We have had the prices of Roullion, but these prices here were the prices that I stated are the ones that I received.

Q. Did you receive that by letter?

A. No, sir; from the actual invoice that was shown to me in London.

271 Q. Then you went to London before you went to Lyons?

A. Yes, sir; I was in London first. That was shown to me in London when I first went there; that is the Roullion.

Q. You made enquiries in London before you went to France at all?

A. Yes, sir; I didn't get the information I desired in London.

Q. When was it you were in London?

A. I was in London about the 18th or 20th of June. I can't say the exact date.

Q. Who did you see in London in respect to gloves?

A. I know all these gentlemen there.

Q. Who?

A. The London jobbing houses.

Q. What enquiries did you make?

A. I asked them the state of the market. They had all heard in regard to this reappraisement going on here in New York, and they were very much interested in it, and they were all in hopes that the thing would be broken up and we would have a specific duty. They would prefer it, be-

272 cause it would probably open the market to them. They all said they could not send goods here to compete with the prices goods are invoiced at.

Q. Do they manufacture gloves in London?

A. No, sir; Dent & Alcroft does.
Q. Did you go to them?
A. Yes, sir.
Q. Did you get information from them?
A. That I decline to give. I know Mr. Kenshaw and we had a talk together.
Q. Did they show you any invoices.
A. That I decline to state. I made a statement here that I think covers all that ground.
Q. What other houses did you go to?
A. Foster, Porter & Co.
Q. What other house?
A. Neefe, Son & Co.
Q. Did any of those houses purchase Trefousse gloves?
A. No, sir.
Q. Did you go to the house of Morley?
A. I did.
Q. Did you ask them what the price of Trefousse gloves was?
A. Yes, sir.
Q. What they bought them for?
A. Yes.
273 Q. They gave you the information probably?
A. That I decline to state.
Q. Did you buy any gloves of them?
A. Yes, sir.
Q. How many?
A. That one pair—no, I didn't buy that one pair; they gave it to me.
Q. Why did you take that particular color?
A. I had no reason to take any color. I took the gloves that were handed to me. It was immaterial which glove I took.
Q. Did you examine a large quantity of gloves at their establishment?
A. I saw the various makes and qualities that they had there. I didn't go through their stock and examine every dozen of gloves. They voluntarily showed me the samples of the various gloves there.
Q. Did you examine them critically, such an examination as you made here a little while ago?
A. I did in reference to half a dozen gloves. I didn't take them apart. I took this pair out. They all seemed to be alike. I
274 didn't make any selection whatever in regard to the pair of gloves. The glove was pulled out hap-hazzard and handed to me.
Q. How did it compare with this?
A. It was a fair sample of the half dozen gloves that were handed to me.
Q. They had only one quality of the Trefousse glove?
A. No; they had the quality that is represented by the Garibaldi.
Q. Were they stamped Garibaldi?
A. No, sir; they told me they were, and they were self welts also.
Q. Do you mean to say that you understand that the self welts are more expensive than the white welts?
A. They generally cost about half a franc more of the same quality of goods.

Q. Are you not certain that the white welts cost more?

A. I could always purchase white welts cheaper than I could purchase self welts. Every manufacturer will tell you that.

Q. Do you know anything about the cost of them? Which costs
275 the most to make, the white welts or the self welt?

A. The sewing would be about the same. The self welt takes more of the same leather. They make white welt out of lamb skin.

Q. You think the self welt costs the most?

A. Yes, sir; everybody knows that that has anything to do with gloves.

Q. Do they make those white welts out of lamb skin on the Paris glove?

A. Generally, they do.

Q. You think those Trefousse gloves that are sold to Morley, the white welts, are lamb skins?

A. I didn't examine them critically; I didn't give it much attention. They are generally made from lamb skin.

Q. Is your opinion as to these gloves, that are imported of the Trefousse glove in America, based upon the examination of this one pair that you brought out, that they are fully equal to the London quality?

A. Do you mean to say, is that glove a fit representative?

276 Q. I asked you if your opinion is based upon a comparison of that glove with the Trefousse glove you have examined here this morning, the purple glove?

A. The black, according to my judgment, are really—of course, if I had the colored gloves—the black gloves of those that I saw did not look as well as these blacks here, although they might probably be the same thing.

(Former question repeated.)

A. No, sir; it is not based upon that glove at all.

Q. What is it based upon?

A. I merely brought that glove to show the glove that was sold to Morley in London at the price of 52 francs per dozen.

The GENERAL APPRAISER. I think he has explained that he examined several pair of gloves. Do you want to ask him whether he has compared that purple pair with the gloves now under consideration?

277 Mr. CLARK. He has testified here this morning that the gloves here are fully as good as the purple sample. I want to know if he bases that opinion upon the comparison that he made this morning.

By GENERAL APPRAISER:

Q. Do you understand that? He wants to know whether you have this morning compared that purple sample with the gloves under consideration, so as to say how the latter compares with the former?

A. I consider these blacks a better quality of glove than what these would be in blacks of that purple glove.

By Mr. CLARK:

Q. Then your testimony is based upon a comparison of the blacks with this purple glove?

A. Yes, sir. If I had the same colors I could make a better comparison, because I don't think it is a test of colored glove with an opera shade.

Q. Why didn't you bring some colored gloves with you from
278 Morleys? If you were going to buy a thousand dozen gloves, wouldn't you examine more than a single pair?

A. Certainly I would.

Q. What examination of the Trefousse glove did you make at Morley's?

A. These goods are in regard to a quality of glove like that which is designated as the first quality of glove, is hardly a necessity, where the maker's name is stamped inside, to take them apart, because a maker will not put his name in unless they are all right.

By GENERAL APPRAISER:

Q. Did you see the skin of which these half dozen pair were made?

A. No, sir.

Q. Were the gloves wrapped up in paper?

A. No, sir; with a band on.

Q. You didn't open them at all?

A. No, sir.

Q. You simply drew out one pair?

A. Yes, sir.

Q. And this is this purple pair?

A. Yes.

Q. So that really was the only pair of the lot that you saw the material of?

279 A. Yes, sir; except the tops I picked up the half dozen and looked at them as we generally do, and I asked for a pair of gloves and it was drawn out, and that was the pair that was drawn out.

Q. When you looked at them this way, you certainly saw the kid of which the gloves were made?

A. Yes, sir.

Q. Was the package you examined made up like this?

A. Yes, sir.

Q. Simply with pieces on the outside?

A. Yes, sir.

Q. And not with each glove wrapped up as these gloves are there?

A. No, sir.

Q. They were open in that way?

A. Yes, sir; I didn't draw out the pair myself; Mr. Walcott drew them out and gave them to me.

By Mr. CLARK:

Q. Was it the half dozen that you examined running over in this way, that this pair was taken from?

A. I won't be positive about that, but that is the presumption.

280 My inference is, that that was the case. We were talking together and when I asked him for the pair, he took a half a dozen up and handed it to me.

Q. Look at that half dozen of gloves that I hand you (London blacks). Have you completed your examination?

A. Yes, sir.

Q. You didn't give the gloves in London any such examination as you have just given these?

A. No, sir.

Q. What do you think of these gloves I have just shown you?

A. That is rather a difficult thing to test. Here is a black glove and

they don't seem to me to have the appearance of the Trefousse glove in black, but they may be from the fact of having the stamp in them. I don't say they are not.

Q. What do you think of the quality of the glove?

281 A. I think they are a good glove. I consider that pair a very good glove.

Q. How does the quality of the skin compare with the B. button black glove of Trefousse that is here, in your opinion?

A. It is one of those things which is very difficult to tell.

By Mr. DUNHAM:

Q. You can tell whether it is better or poorer, can't you?

A. Yes, sir; I think that these blacks seem to be dressed—they are dressed very much like the Jouvin glove. That is the general feeling, but they are a good glove.

Q. Is it a better glove than the other? If so, how much better, do you think?

A. I would say they are about the same thing.

By Mr. CLARK:

Q. You don't think that is any better?

A. No; I don't think it is any better.

Q. But you think it is as good?

A. From the general appearance I think it is the same. They could be made better, but the leather is a good leather, in my opinion.

282 Q. You think they are the same quality of skin?

A. I think they are the same skin.

Q. The same quality of skin?

A. I can't tell; I don't know whether the goods have been selected or not; I have seen better goods, though.

Mr. DUNHAM. The question is: Which is the best between those two gloves? Which particular piece of leather of which those gloves are made is the best? You don't answer the question.

Q. Can you give an opinion, or prefer not to?

A. I prefer not to give an opinion.

Q. You understand Mr. Morley received as good a glove as was manufactured by Mr. Trefousse?

A. No, sir; I don't understand it so. The general impression was that the gloves that came to America stamped with the Trefousse mark are better goods than are received in England. Mr. Walcott has never

283 seen the goods that came to America.

Q. Where did you get that impression? Who did you get that from, as their impression?

A. From the other London houses.

Q. Had they seen the goods that came to America?

A. My presumption is that they had, or they would not have made that statement.

Q. How many made that statement to you?

A. Two of the London houses and several manufacturers in Paris, and it was a general impression throughout.

Q. That they sent their best glove to America?

A. Yes, sir.

Q. The best glove they made was sent to America?

A. Yes, sir.

Q. They do not make a better glove than the ones they send to America; that is clear in your mind, is it?

A. The gloves that I have seen on the market here and the gloves that I have seen of those that are sold to Morley were better than those
284 sold by Morley. I have had the gloves, and examined them critically some time ago.

Q. You mean the American gloves you examined frequently?

A. I have seen the gloves frequently, and also purchased the Trefousse glove, I think, from Passavant.

Q. You mean the American glove you examined critically?

A. And also the others. It is not the first time I have seen the gloves sold by Morley.

Q. Where was it you examined them critically?

A. I have had probably a dozen pair in my possession, and some friends of mine have bought those goods, and we have changed them for those goods. I cannot recollect the time; but I have submitted some of them here that we received in that way. I recollect in Paris one time I saw those gloves of Trefousse, and they had them there in stock, and I examined them there, and I could see that the goods, in my judg-
285 ment, were not as good as those sold by Passavant.

Q. Where else does Trefousse sell his gloves, as you understand it?

A. He sells to Australia also.

Q. You know nothing about the price to which he sells to Australia?

A. Nothing more than from that price-list which we received. I suppose the quotation was given to represent the Australian prices. The question was asked the lowest price of the goods for the house in Australia.

Q. That was what was asked—the lowest price for a house in Australia?

A. Yes.

Q. Anything said about terms of payment?

A. Nothing said about the terms of payment—6 per cent. off.

Q. Do they sell elsewhere in Paris than to the Bon Marche?

A. I don't know.

Q. Did you investigate the Perinot glove as to the price of that?

286 A. No, sir; because it was impossible to investigate it, because no information could be got from it. You could go and ask and they would not give any information. I have purchased from Perinot 400 or 500 dozen of the second quality of gloves of one button. I want to show you the fluctuations since then has not been over 5 or 6 francs.

Q. Don't they sell gloves to London?

A. Not in the London jobbing houses. I have not heard of any sold in the London jobbing houses to any extent.

Q. You didn't go to the house of Fownes Bros. & Co.?

A. No, sir.

Q. You could not find the Perinot glove in London?

A. Not in most of the jobbing houses.

Q. The jobbing houses import most of their own gloves, don't they?

A. Yes, sir; they are large operators—very large.

Q. Did you make any enquiries to see if you could find the
287 Perinot glove?

A. No, sir; we had submitted already the price-list of the Perinot glove in a former examination.

Q. There had been a price-list of the Trefousse glove submitted?

A. Yes, sir; that letter contained the prices.

Q. You didn't make enquiries in Paris about the Perinot glove?

A. I made an enquiry to see if I could get the prices, but it was impossible to do it.

Q. Of how many did you make enquiry?

A. Of two or three parties.

Q. Did you go to the factory?

A. No, sir.

Q. You didn't make any enquiries there?

288 A. I didn't make any effort to go to the factory.

Q. You didn't try to buy any gloves of them?

A. No, sir; it would be no use to do it.

Q. How do you know that?

A. I knew it from the fact that the parties who made the enquiries could not get any information. I knew very well if I went I would not get any.

Q. Did you make any enquiries about the Jouvin glove?

A. No, sir; I did not.

Q. Did you communicate any information to the U. S. consul in respect to the Jouvin glove?

A. The commercial agent of St. Etienne. I went to see him while in St. Etienne, to give him the prices of the Roulleion glove, and during the conversation I said to him that I had made an offer to Francois Calvat, the offer which I stated here, for 25,000 dozen gloves; and I heard during my visit there, I don't know who gave me the information, but it was said that Jouvin had purchased skins at 48 francs, and I stated to him, I asked him if those skins could be purchased for 48 francs; that is,
289 selected skins that would make up the first quality of Jouvin's gloves. He didn't make any reply, but that was the conversation that I had with him.

Q. You told him that the price of the Jouvin glove, first quality, was 48 fr's?

A. No, sir; I did not.

By GENERAL APPRAISER:

Q. Do you refer to dressed skins, or skins in the hair?

A. Skins in the white, dressed skins.

By Mr. CLARK:

Q. Did you hear anything about an offer of Jouvin to sell gloves?

A. No, sir; not from Jouvin; I did not. I don't know who it was, I received a letter from Greenwell, but I don't who it was.

Q. Have you got that letter with you?

A. No, sir.

Q. What was the substance of it?

A. That I decline to give.

Q. Was it in respect to an offer by some manufacturer to sell gloves?

A. That I decline to give.

290 Q. Did you have any information of any sort, while you were abroad, that you could buy first quality of gloves less than 52 francs?

A. No, sir; I could buy Colvat gloves at 50 francs at the present moment, but I stated that the first quality of gloves was down from 3 to 4 francs a dozen, probably since the first of June.

Q. You don't regard the letter you received from Grenwell as conveying any information to you?

A. That I decline to answer.

Q. Where did you get the franc price of the Courvoisier glove?

A. Stated by statement of the London buyers. That statement has been verified.

Q. Will you give the name of one of them?

A. No, sir.

Q. Did the house of Courvoisier, in France, sell any gloves to anybody in London?

A. The retail trade they do. They sell through their representative house in London.

Q. Don't they sell them in London just as Trefousse sells his goods in New York, as he does to Wilmerding, Hoguet & Co.?

A. They will sell them to anybody, I suppose.

Q. Don't they sell them at a shilling price in London?

A. Yes, sir.

291 Q. Do they ever sell them at a franc price in Paris, to your knowledge or belief?

A. In my belief, they do, from the fact of making the gloves in Paris.

Q. Courvoisier has a house in London?

A. Yes, sir.

Q. And isn't every glove of theirs sold in England sold through that house?

A. That I don't know.

Q. And sold deliverable in London?

A. That I don't know. Here is the glove that I have produced.

Q. Where did you purchase that package of gloves?

A. That I decline to answer at present. That was purchased by one of the London houses, from George, Hooker, Courvoisier & Co.

Q. In London?

A. Yes, sir.

Q. And you had a shilling price for it?

A. Yes, sir.

Q. Not a franc price?

A. No, sir.

Q. Did you investigate the price of skins?

292 A. Not thoroughly; my main object was more particularly to get the market value of the goods. Not the cost of the manufacture. It was more essential to get the market price of goods than the cost of manufacture. It was a very difficult matter to get the cost of manufacture. There would always be a slight discrepancy.

Q. Where did you get the information that you gave to Mr. Grenwell about skins?

A. That I can't recollect.

Q. Do you think these was an exceptionally high or an exceptionally low price?

A. I thought it was a low price; that is, for skins that were all selected. In purchasing skins you might buy them at 30 francs, but it would be a very small percentage of the best choice.

Q. Didn't you converse with Calvat about skins?

A. I did.

Q. What information did you get from him?

293 A. The information that I received from him in regard to the selection of the skins, what he designated as his first quality; and after those skins are purchased a selection is made, and the ones that are designated as second quality of leather are made into his second quality of glove, called his No. 2 quality. His first are made into his quality of Francois Calvat, and the other into quality Armand Calvat; and after his first quality is made into gloves there is a selection made of the gloves, and about 10 per cent. of those made into seconds.

Q. Have you got any samples of the purchase you made of Calvat with you?

A. No, sir.

Q. Have they arrived yet?

A. No, sir.

Q. When do you expect them?

A. In the course of two or three weeks.

Q. You didn't bring any of the Calvat gloves with you?

A. No, sir; we have them in the store; they are the same thing. If you would like to see them you can have sample.

Q. Did you see a manufacturer in Grenoble by the name of Jay?

294 A. No, sir.

Q. Did you go to more than one manufacturer in Grenoble to get any gloves?

A. Yes, sir.

Q. Get any first quality of gloves?

A. None, with the exception of what they designated as Fousse quality.

Q. What do you think is the price of skins last season, from your information, such as those that come to America are made of?

A. It would be difficult to determine that. In purchasing the first quality of skins you cannot tell what per cent. of skins would be thrown out.

Q. Does Calvat purchase his skins exclusively from one man, all at one place?

A. That I can't tell.

Q. Isn't it a custom for them to buy wherever they can?

A. The first quality of skins, as a rule, are generally bought at Annoway.

By Mr. DUNHAM:

Q. Did Calvat tell you what he paid for his skins?

A. No, sir.

Q. For the last month or two?

295 A. No, sir; I did not think it worth while to go into the details of manufacture.

Q. You didn't get the details from him of the manufacture?

A. No, sir; only in a disjointed way; but I submitted to several manufacturers in Paris the statement made by Mr. Clark, and in Paris some of the manufacturers said that was very nearly correct, and in Grenoble the cost of making the glove would be about 15 per cent. cheaper; that is, the actual labor expended on the gloves.

By Mr. CLARK:

Q. You didn't submit Mr. Wills' statement?

A. I didn't see his statement. I dikn't know that he made one.

Q. What manufacturers did you submit it to?

A. Mr. Buscoli V. Mali was one; he is a large manufacturer of various kinds of goods, and he makes a good glove.

Q. How high a price glove?

A. 51 francs.

Q. Where does he sell it?

296 A. I don't know. He would like to sell it to America, but he cannot do it.

Q. You regard this Bon Marche as a cheap glove?

A. It is the same glove, with the exception of being seconds to the London Trefousse glove.

By Mr. MCCOOK:

Q. Do you consider the Trefousse, Alexander, and Perinot, all those gloves, to have the same marketable value?

A. About the same. They have probably varied from 1 to 3 or 4 francs a dozen.

Q. But they average about the same?

A. They are considered a first-class glove, and they are all sold in the market here at about the same price.

Q. Would you make a distinction in marketable value between the Alexander and the other gloves named.

A. No; I think they are about the same. The general impression is that the skins made by Trefousse are the finest skins made in the world; they are better selected.

Q. A little finer than the Alexander?

297 A. Yes, sir; but they are all designated as the first quality of goods; that is, what I have seen. I have not seen any American goods for two or three months.

Q. That impression is based from hearsay, and not from actual knowledge?

A. No; it is actual knowledge. I consider all the goods first quality gloves.

Q. Then you know the Trefousse skins are better than the ones manufactured by Fortin and the Alexander gloves?

A. Those that I have seen I consider better. There is a very small difference.

Q. Did you ever see the skins before they were manufactured into gloves?

A. No, sir; I am only judging from the gloves themselves.

Q. After half an hour's examination of some gloves handed you by Mr. Clark, you said you preferred not to give an opinion; was that because as an expert you were incompetent to distinguish between
298 them, or because you were unwilling to swear to a guess?

A. In regard to those two samples, they might have probably been selected and picked out and presented here to show one glove was worse than the other.

Q. And you are unable to distinguish one from the other, to tell which was the best?

A. The disposition is undoubtedly to establish the fact that those goods are better than the goods that come to America.

Q. I want to know whether as an expert you are able to tell which one of those gloves is better than the other?

A. There are one or two pairs that I consider very good gloves.

Q. Then why don't you give an answer?

A. I stated they were good gloves.

Q. That is not an answer.

A. I decline to give an opinion in regard to those gloves at the present moment. I would like to have a little time.

299 Q. You had half an hour to examine them, and it didn't take five minutes in London. Do you want the name inside of the glove to enable you to distinguish it?

By Mr. DUNHAM:

Q. Is it necessary for you as an expert to have the name in a glove to enable you to say which is the best glove?

A. No, sir.

Q. Then why don't you give your opinion right straight out as an honest man which was the best glove and which was not?

By Mr. MCCOOK:

Q. You say the first quality of gloves have fallen in the past 3 or 4 months from 3 to 4 francs?

A. Yes, sir.

Q. Does that apply to all of the first quality of gloves?

A. Yes, sir, the past 3 months—no, since about the 1st of June.

Q. What do you say is the value to-day of these first quality
300 gloves, the market value upon which an invoice should be based?

A. Base it upon an average value all the way through.

Q. I ask the amount in francs; if they were 52 francs three months ago, and have fallen 4 francs, what is the proper invoice price to-day?

A. Three months ago they were 55 francs; they are now but 52, those goods that were sold in England.

Q. I am speaking of here, for the passing of the custom-house here?

A. You want the present price of gloves in Europe?

Q. I want your opinion as to the present market price of gloves which would be the basis for invoicing this quality of gloves, to pass the custom-house to-day.

A. You mean A. T. Stewart's?

Q. I mean first quality of gloves. Remember what you swore last spring when you said that 52 francs was the market value of those gloves. You say now they have fallen off 4 francs a dozen. Now, what is the present price to-day in invoicing those goods?

301 A. I didn't say these goods; we had price-lists to represent each manufacturer.

Q. It was Mr. Read that swore that. What was the price of the Trefousse gloves 4 months ago?

A. You are making two line of goods; the goods for England and the goods for America.

Q. The goods that come into this harbor?

A. 58 franc' at that time.

Q. As an expert, are you willing to risk your judgment and when under oath as a merchant as presuming to know somethinga bout the value of kid gloves, and say that 4 months ago those gloves were worth 58 francs a dozen?

A. Four months ago, the 18th of April, the price at that time was 55 francs for two button that went to England, and they were white welts, and the self welts would bring them to 56 francs.

Q. I want you to answer my question. What was the value of
302 the Trefousse gloves 4 months ago in New York?

A. At that time I should say 58 francs.

Q. What should you say now?

A. I should say now 54 about for those goods.

Q. You are willing to risk your reputation as an expert on that and as a merchant?

A. Certainly. I have not seen the goods at all.

Q. Then you don't know anything about them?

A. I can't tell unless I see them.

Q. You pretend to pass judgment on goods that you have never seen, because you swore they were 48 francs?

A. I am giving you the price-list that I received.

Q. I ask you of your knowledge as an expert. I will go on to another point. What is the difference in price between those gloves as sold to merchants like Morley in London and to merchants taking large here in New York?

303 A. Allow me to answer that this way. The price that Morley pays is 52 francs, and the goods that come to America are worth fully 2 francs a dozen more.

Q. Why?

A. From the better selection.

Q. Yet when the gloves are put here before you, you cannot tell one from the other, the London and the New York glove. Why does the best trade of London and the people who are supposed to be judges of such things, be satisfied with a glove inferior to the one sent to New York market?

A. My judgment in regard to that is that the American people desire a better glove than English people do.

Q. Is that common sense; that people of the aristocracy of the world would not pay a better price than we can afford to pay here in New York during panicky times?

A. That may be. I am speaking of these gloves. Of course,
304 there are a great many gloves worn by the aristocracy in London that the smaller makers in Paris make—a finer glove. The Couvoisier is a fine glove, and sold extensively to the retail trade.

Q. What is the difference between the Francois Calvat glove that you purchased and the Roullion and these other first-class gloves?

A. He has from two to 4 francs a dozen less.

Q. Less than what figure?

A. His price for two-button gloves is 50 francs a dozen.

Q. The Trefouse or Fortin?

A. He would probably be within 4 francs a dozen below them; that is, the goods that come to America.

Q. You have purchased his gloves recently—Francois Calvat?

A. Yes, sir.

Q. At what price?

A. 50 francs a dozen, in two button.

Q. At what amount?

A. I decline to give that. You can see the invoice.

Q. Give about the amount.

305 A. I can't give the amount. It would be the same for 2 dozen as for 20,000. It would make no difference.

Q. Do you as a merchant say that any glove manufacturer will sell two dozen of gloves at the same price that he will sell 20,000 doz. gloves for?

A. I can produce a letter to that effect.

By the GENERAL APPRAISER:

Q. Was that a wholesale purchase or a retail purchase?

A. A retail purchase. It was a purchase for a personal use.

By Mr. McCOOK:

Q. A retail purchase at 50 francs?

A. That is his price; his price is 50.

Q. What would he sell to a man who would take 20,000 dozen?

A. He would not sell it for less, because we represent him in America, and he would give us the advantage.

Q. You consider that a proper and right advantage?

306 A. We cannot sell gloves at 50 francs a dozen when they are coming in at 42 francs.

Q. Are those gloves 4 francs less than the Fortin and the Trefousse gloves?

A. Four francs a dozen less than the Trefouse gloves.

Q. Or the Fortin?

A. I don't say positively that they are 4 francs. I say that the gloves have declined 4 francs a dozen, and of course the price of those goods were 55 francs—of the goods that go to England.

Q. I am speaking of gloves that come to America, like yours. Are the Calvat gloves 4 francs less in valuation than Fortin?

A. I will say 3 to 4 francs a dozen less than Fortin and Courvoisier.

Q. You made an offer for 25,000 Calvat gloves at what price?

A. 42 francs.

Q. Was there any conditions?

A. A rise of 3 francs a dozen on each button. No other conditions; but the offer was positively refused.

Q. Why did you offer as a sensible merchant 42 francs a dozen

307 when you knew that he had an absolutely fixed price at 50 francs?

A. Because, these goods being invoiced at 42, I wanted to see if goods of the first quality could be offered at 42 francs.

Q. It was not a bona fide offer?

A. It was, because I could have marketed them in England.

Q. You did not want them for America?

A. If I could make anything that way I would do it.

Q. Then you are ready to go out of your trade here when you see a little margin elsewhere?

A. I don't say that.

Q. You didn't intend to send those goods to America if he had given them to you at 42 francs; you were trying to buy for the English market?

A. No, sir.

Q. Did you when you made the offer for 42 francs a dozen intend that as a bona fide offer with the expectation of bringing them to the United States?

308 A. Of course I would have brought them to America.

Q. You said just now you would sell them in England?

A. I would sell them in England and bring them to America, too.

Q. Could this man—you know all about his capacity for manufacturing—could Calvat complete for you within, say, six months 25,000 dozen gloves in addition to his regular supply?

A. That I don't know.

Q. Why did you make the offer?

A. He could make the deliveries when I wanted them. It was not necessary to have them all delivered at one time.

Q. Could he do it within two years?

A. Yes, sir.

Q. What was his capacity?

A. You could give him a order for 50,000 dozen and he would make it.

Q. What was his capacity for manufacturing gloves?

A. It depends altogether on the size of the order.

309 Q. Within a time which you will be willing to give the order?

A. In talking of 50,000 dozen, I don't suppose anybody could make them except Trefousse.

Q. You assume that Calvat could not make these 25,000 dozen within six months if he had accepted it?

A. I could not say positively, but my impression is that he could; I think that he could.

Q. Would you have bought at that time, or now, the Trefousse or Fortin glove at 4 or 3 francs or 5 francs less than your quotation, less than your price, 52 francs, your present quotation?

A. When I was abroad, you mean?

Q Would you have bought Fortin or Trefousse gloves at 48 francs when you were abroad?

A. I could not have done it.

Q. Would you have done it if you could?

A. At 48 francs, that would be a question. The goods when I left were down 4 francs a dozen, 3 or 4 francs.

Q. Then you would not have bought them at 48 francs a dozen?

310 A. No, I would not have bought them at 48 francs.

Q. Why not?

A. Because these goods had been entered at 42 francs. I could not compete with these people here.

Q. Then they are not worth 48 francs?

A. Yes, they are worth 48 francs.

Q. Why didn't you buy them, then?

A. Because I could not compete with anybody that paid 42 francs.

Q. That would have been the market price on the other side if you had bought those at 48 francs?

The GENERAL APPRAISER. That is not a question for him to decide.

Q. Would you have bought them at 45 then or to-day, 25,000 dozen of them?

A. I would not have bought any goods *under* 42 francs at that time, from the fact that the goods being entered at the price they were—42 f.

Q. Will you buy them now at 42 f.?

A. No, I would not buy any at the present moment.

Q. Why not?

311 A. I decline to answer.

Q. If those goods are undervalued at 42 f., will you buy 25,000 dozen of Fortin or Trefousse gloves at 42 f. plus the charges and duties, with their band on?

Mr. LIBBEY. I offer you from 25 to 50 thousand dozen of the Fortin glove at 42 francs delivered in Paris, or delivered in New York with duty and charges, and I challenge you to buy them.

Mr. WILLIAMS. The genuine glove, with the Alexandre brand on?

Mr. LIBBEY. Yes; the genuine glove, with the Alexandre brand; the regular article, which we import and sell.

Q. Did you go to Fortin's when you were in Paris?

A. We would not give any price whatever.

Q. You didn't make any investigation of Fortin's glove?

A. I know some parties that had.

Q. If some parties did, why would you not go?

312 A. Because he would not give any information to those parties.

Q. Do you know the reason why he would not?

A. Because he did not want to give his price.

Q. He was not satisfied they were bona fide buyers, probably?

A. I don't know about that.

Q. Don't you know the custom prevails in France if a person comes in for prices, when he is not known as a bona fide purchaser, that he always receives what is known as "a price in the air"?

A. There is no difficulty about anybody getting prices that are not confining their goods to any one single house in America.

Q. Have you any knowledge of the price of Alexandre gloves or Fortin gloves as sold in London?

A. No, sir.

Q. Have you any knowledge that any of them are sold in London?

A. No, sir.

Q. Do you know that any of them are sold in any other market than New York?

313 A. I don't know at the present moment; there was a time when they were sold in St. Petersburgh.

Q. How long ago was that?

A. Some years ago.

Q. Do you know it of your own knowledge?

A. It has been many years ago.

Q. At least 20?

A. At least 20 years.

Q. Then none of those gloves have been sold anywhere but in New York?

A. Not to my knowledge.

Q, Did you ascertain in Paris the market price, the chief market of France, of Fortin's gloves, those brands of the Alexandre?

A. The only information I received was through some manufacturers there.

Q. Rival manufacture's?

A. You would call them rival manufacturers; they are manufacturers of gloves.

Q. Then you have no personal knowledge of the market value in France of Fortin's gloves, bearing the mark Alexandre?

314 A. The only market value I can establish is comparing them with other goods.

Q. Then you admit that you cannot establish the market value for that grade of goods?

A. I can by comparing them with other goods. I am giving it as the Government requires it; where the actual prices cannot be ascertained it must be ascertained by goods of like quality, and I give it according to the prices of goods of like quality.

Q. While you say that you are unwilling to express an opinion as to the quality of the two gloves before you, do you consider the price-lists as furnished by any manufacturer as a reliable basis upon which to make purchases?

A. I do where it is received by houses of standing and integrity, and those who have made purchases from those manufacturers.

315 Q. Would you have made such purchases, taking for granted their integrity; would you go into a house in Paris and give orders or send orders on their published price-lists?

A. That would depend altogether how it was, because we take orders ourselves on published price-lists.

Q. On specific letters?

A. No, sir; on printed price-lists; we will take orders on those printed price-lists.

Q. Do you take it on that list with a special understanding in advance as to a special discount?

A. No, sir.

Q. You spoke of buying some 1,200 dozen of gloves at Grenoble; were any of those gloves lamb-skin gloves?

A. No, sir; all kid.

Q. What proportion of them was first quality?

A. I could not tell you exactly.

By Mr. CLARK:

316 Q. Can you give any explanation—have you any in your mind—why it is, if the Trefousse glove that comes to this country is worth 2 francs a dozen more than the glove they send to London, and they can sell the quality that they send to London for 52 francs, that they are willing to send them to this country and sell them at a price which will not return to them anything like 52 francs?

A. My impression is that they do return them—at the price they even sell them at they return them more than 52 francs. I think that has been shown here.

Q. Assuming it should turn out differently how would you explain it?

A. I don't understand the question properly.

Q. Assuming that they do not realize anything like 52 francs a dozen for the gloves they send here, why should they be willing to send them to this market if they can sell them in London at 54 or even at 52 francs?

A. That is more than I can get through my head.

317 The GENERAL APPRAISER. I want to submit the whole of the letter that I proposed a while ago to read an extract from. It is from Francois, Henon & Greder, successors of Croton:

"GRENOBLE, *August 1st*, 1878.

"WILLIAM F. READ, *Philadelphia:*

"Mr. Whittington wrote us to send you by post a sample pair of the lot that he had bought, but the cases containing the lot had left some few days and there are no pairs which we could send you. We beg also to inform you when in Grenoble Mr. Wittington offered in our presence an order to Francois Calvat for 25,000 dozen at 42 francs, 8 per cent. off, 2 button, and a rise of 3 francs on each button, but he refused it. Francois Calvat's price for two buttons is 50 francs, 8 per cent., as well for an order of 100 dozen as for 3,000. He has only one price. No glove of equal

318 quality can be produced under that price, 50 francs. The first Paris makers are Jouvin, Trefousse, etc., etc., which are better in quality and which the production is more expensive—must cost at least 5 francs more than the gloves sent to America by Trefousse, and are stamped 'Trefousse,' and with the brand, 'best quality' with medals. They are his first quality, and must cost 54 to 56 francs; but if the gloves are not stamped with his name they are his second choice, which may cost 42 francs. Generally Trefousse sends his first quality to Australia, America, and England, and the second quality to large Paris retailers. The price of skins are advancing and it is impossible to produce gloves under prices quoted above.

"We remain, dear sir, very truly,

"FRANCOIS, HENON & GREDEN."

There is a proscript that relates to gloves, which has nothing to do with this question, so I will not read it.

I will read an extract here that I want to offer, and if you gen-

319 tlemen want the whole letter put in you can put it in.

This is a letter dated Grenoble, the 6th of July, 1878, directed to Mr. F. Keeirt, Philadelphia. It is in French, and here is a translation between the lines, signed by Francois Calvat. The section of the letter to which I refer is this:

"He (that is, Mr. Wittington) will also confirm to you what we have already stated in our preceding letters, that our gloves, Francois Calvat quality, are actually below the price of our competitors which make the same quality, and we would not be able to obtain in our place 2-button gloves of that quality at less than 52 francs per dozen."

By GENERAL APPRAISER:

Q. You found a few weeks ago at Grenoble that Calvat's price was 50 francs, less 8 per cent.?

A. Yes, sir.

Q. What was his price before that?

A. His price before that was 54 francs, 4 months ago.

320 Q. You have some gloves from him at the time invoiced at 54 francs?

A. Yes.

Q. Was there any intermediate price during that period of 4 months?

A. They fell, I think, down to 52.

Q. When did they fall to 52?

A. I think it was some time during the latter part of May. I think we have some correspondence in regard to the subject.

Q. You were there in July?

A. Yes, sir.

Q. Do you know whether Morley has ever paid any other price than 52 francs for the Trefousse gloves, more or less?

A. They paid more 4 months ago, I think.

Q. Do you know anything about it; have you any positive information?

A. No positive information, but my impression is that they did, because they told me that that was the lowest price. They said they had been falling.

Q. Did they state how recently that fall was?

321 A. No; they did not tell me. The price present was 52 francs, and they could not be purchased for less.

Q. Are these samples of the Francois Calvat glove?

A. Yes, sir.

Q. These are supposed to represent your former importations. You brought them here and I have retained them.

A. Yes, sir.

Q. Are they of the same grade or quality, or are they not, as the gloves which you refer to as having made the offer in Grenoble?

A. These are the same quality of gloves.

Q. There has been no change in the quality?

A. No, sir.

Q. What comparison do you make between these samples of the Calvat glove and the gloves now under consideration, the Trefousse and Alexandre gloves?

A. I should say, according to my judgment, the Alexandre gloves—I should say at the present moment make a difference of 2 francs a dozen.

By Mr. CONSTABLE:

322 Q. 2 francs a dozen better than these?

A. Yes, sir, at the present moment.

By Mr. COOK:

Q. You say that Calvat consigned his gloves to you at 54 francs four months ago?

A. I could not say positively how long ago.

Q. Was there any commission on that—did you remit him 54 francs for them clean?

A. 54 francs less 8 per cent. discount.

Q. What was the commission or allowance—did you do that clean—do the business for nothing?

A. That was a purchase, 54 francs.

Q. All your transactions were purchases up to this time?

A. Yes, sir.

Q. What was your special discount, to you as a good customer?

A. No discount whatever. The price was 54 francs less 8 per cent., and we settled for those goods by banker's credit.

Q. For the full amount?

323 A. The amount of the invoice less 8 per cent.

By the GENERAL APPRAISER:

Q. Do you receive consignments of the first quality of gloves from Calvat?

A. Not yet.

Q. Have you placed any orders for them?

A. No, sir.

Q. Then you don't know anything about the price of that grade?

A. Yes, sir; but I have had no consignment.

Q. Was any part of this letter written at your suggestion?

A. No, sir; it was not.

Mr. CLARK. The London gloves of Trefousse were the gloves that were produced here formerly.

PLAINTIFFS' COUNSEL. We further offer in evidence the book A & B, just marked for identification and identified a few minutes ago by the witness Merritt as containing the record of the proceedings before the collector upon this appraissement.

324 (Defendant's counsel objected to their record being produced in evidence.)

The COURT. Ruled out.

(To this ruling the plaintiffs' counsel then & there duly excepted.)

Mr. TREMAIN. I particularly offer separately the evidence in this book B, just excluded, marked "Plaintiffs' Exhibit N," for identification of James McCreery as tending to sustain the protests.

The COURT. I rule out that evidence.

Mr. TREMAIN. And the evidence also of Paul Aucelle in the same book, which we now offer?

The COURT. Yes.

(Plaintiffs' counsel then and there *only* excepted to the said ruling, and further offered the evidence in the said book of A. K. P. Cooper as tending to sustain the protests, and as tending to show that the collector dis-

325 regarded the evidence before him in making his decision, and that he was guilty of actionable neglect in the conclusions he arrived at.

Defendant's counsel objected to the record as immaterial, irrelevant, and also for the further reason that the evidence was offered to prove facts which were not specified as grounds of complaint in the plaintiffs' protests.)

The COURT. It is excluded.

(Plaintiffs' counsel excepted to the exclusion of each and all this testimony and record.)

The excluded records are as follows:

JAMES MCCREERY, being duly sworn, testifies:

By the GENERAL APPRAISER:

Q. You are of the house of James McCreery and Co.?
A. Yes, sir.
Q. You import the glove known as the Jouvin glove?
A. Yes, sir.
Q. You are the sole importers of that glove?
A. In New York; yes, sir.

By Mr. CLARK:

326 Q. You have been recently in France?
A. Yes, sir.

Q. Have you made any inquiry as to whether a glove equal to the Jouvin glove could be purchased there for 42 francs?
A. Yes, sir.
Q. State what you did.

A. A couple of days before I left Paris I was sitting in the inner office in the house of E. Kampman, and an employee tapped at the door and handed in a card, on which was the name of Jay. I didn't know who Jay was, and supposed that he must have had some connection with the former house of Christ, Jay & Co., of New York. I said show the gentleman in, and a young man came in that I recognized as a former employee of the widow Jouvin, first at Grenoble and afterwards in Paris. He said that he came to talk to me, to propose to me the sale of gloves. He wanted to enter in a relation with us here. He stated that his
327 father had been 20 years employed in the house of the Widow Jouvin; that he had been at the head of the manufacturing department there; that he had been formerly a cutter. He gave me the details and gave me reasons why he could furnish gloves as good as the Jouvin glove. He brought there a carton of samples of gloves, the price of which was 39 francs. I looked over those gloves and I had no objection to make, either to the cutting or the sewing of the gloves, but I did not think the finishing of the skins was quite equal to that of the Widow Jouvin. Then I asked him, "You know the kind of gloves that I have been receiving from that house formerly, and I want to know from you at what price you can make me just such a glove as they send to New York;" and he said they could do it for 5 per cent. more. I said, "Can you give me something very superior and very extra at 42 francs for two but-
328 tons?" and he said he could, and that all the difference in the making, dyeing, and everything up to the quality of the skins was included in the 39 francs, and by putting 3 francs more, equal to $7\frac{1}{2}$ per cent., that would be about the estimate, he could get something very superior for that price. I then asked him about the discount, and he said the discount deliverable in Paris through our commission-house there would be 6 per cent. There was a return commission of 2 per cent. to the commission-house, and that one per cent. they would keep for the expenses and risk of coming from Grenoble and delivery in Paris. I said, "Well, if you will ship the goods direct to us in New York or deliver them here to our commission-house, and we pay the commission, and you have no return of commission to pay, can we not ship them direct for the
329 same discount that you give in Grenoble, 8 per cent. and one per

cent.?" and he said yes, to do business with us he would do that; and I gave him a small trial order upon those conditions. The goods are to be delivered to us at 42 francs for 2 buttons, with 8 per cent. and one per cent. discount. He said they would be in every respect in the quality of kid equal to the gloves sent here—to the Jouvin gloves; and furthermore he guarantees every pair to the wearer. If any of the gloves sent rip when it is put on, if there is any allowance to be made to the lady, the conditions are he is to make them good, and if any tears he is to replace it.

By Mr. McCOOK:

Q. What advance for additional buttons?

A. Three francs. I asked him then if the price for 2 buttons
330 was 42 francs, what would be the price for 3 buttons, and he said the usual advance of 3 francs. I said, "In order that there may be no dispute between you and me hereafter in regard to these details will you be kind enough to write me a letter, in which you will embody these details," and he wrote me such a letter, and here it is. It is in French. I will translate it.

"PARIS, *the 2' of August*, 1878.

"Mr. JAMES MCCREERY:

"DEAR SIR: To enter into relations with your house I call your attention to the fact that my father was for 20 years at the head of the manufacture of gloves of the house of Jouvin & Co., of Grenoble. I can make the kid glove of first quality, conforming in cut and everything to that made by the house of Jouvin & Co., for your house in New York at the price of 42 francs for men's gloves of one button and women's
331 gloves of two button, and 45 francs for the gloves of women's 3 button and men's two button. The double-stitched gloves for men of one button will be counted to you at the price of 51 francs, and 54 francs for 3 buttons" (but it should be 2 buttons; it is evidently a mistake). "On every invoice there will be counted to you 8 per cent. and one per cent discount; the same shall be payable on the receipt of the merchandise in New York by sight draft on Paris. In hopes that these conditions will be agreeable to you,

"I pray you, sir, to accept my sincere salutations,

"T. JAY."

By GENERAL APPRAISER:

Q. Have you anything else to offer?

A. I had in my mind when I went over there that I should fully satisfy myself with regard to the cost of production of the gloves that
332 were consigned to me here, and fully satisfy myself whether the prices at which they were consigned covered not only cost of production, but also a fair manufacture's profit, as that establishes, to a certain extent, the market value of the goods there; so I asked for copies of bills of the purchase of skins, the cost of dressing, the cost of dyeing, the cost of cutting, and the cost of sewing and buttons, and the small expenses and various matters. I said: "I want real transactions, and want them

them certified to." So I received paper, which in France are truly legalized upon all these matters. The price paid for skins and the price paid for dressing them and for dy'ing. I have heard here on this investigation as high as 5 francs for the cost of dyeing, and the actual cost is 2 francs per dozen. There are 2,250 of skins, dark colors, at 23 francs the gross. That is for dyeing.

333 Q. What is this paper?

A. This is a bill to the Widow Jouvin from the party who did this work.

Q. Here are 2,250 dozen and one skin, of" which the hair has been already taken, at 23 francs a gross; that is for dyeing?

A. Yes, sir; a little under 2 francs.

Q. Here are 82 dozen at 30 francs.

A. Yes; that is 2½ francs.

Q. 249 dozen at 36 francs.

A. You see that is for marine blue and that is Siberian green, and that is a more expensive quality; and bronze, 26 francs.

Q. So you find the dyeing is about 2 francs?

A. Yes, sir; because here are whites which are only 11 francs the gross, 2 francs a dozen of skins.

Q. Have you anything else?

A. I have got some bills in regard to the cost of the skins in the hair for the year 1877. I didn't bring any of this year, because that

334 don't involve anything in the question of the past. On account of the purchase of skins in the hair by a house—Messrs. Bladdell & Hemtier—871 dozen and 8 skins, cost 36,351 francs 65, equal to 41 f. 77 a dozen. Here is another purchase of 65 bales of skins, containing 35,336 skins, and the purchase-money, commission, and cost, all foot up, in bales, amount to 111,585 f. 40. That is the price of 37 f. 86 per dozen skins.

Q. Where is this bill from?

A. That is from the parties that sold the skins.

Q. Were these skins all used in first quality of gloves necessarily?

A. No, not all was in the first quality of gloves, because they select out the handsome' of the skins for the best glove.

Q. Were any of these skins used for first quality of gloves?

A. This comprises the entire purchase of skins for the house. That is all the skins they used for the year 1877. They sort them

335 and sell them. Here is a bill from another party and in this one there is—

11	dozen	of	skins	at	36	francs.
14	"	"	"	"	38	"
27	"	"	"	"	39	"
33	"	"	"	"	40	"
45	"	"	"	"	41	"
168	"	"	"	"	42	"
680	"	"	"	"	43	"
169	"	"	"	"	44	"
25	"	"	"	"	45	"

And there is in addition 40 dozen of skins which are counted out 2 skins for one, or 20 dozen at 43 francs; and then there is deducted two

dozen and six skins which are bad. The commission and expenses upon this bill amount to 2,082 & 50, and the whole lot of skins cost 52,843 francs. The cost of dressing: Here is a paper certifying that the signers of this document receives from Jouvin, of Grenoble, 2,937 dozen of kid skins to dress, at the price of 5 francs the dozen, and 11 dozen
336 and 11 skins of lamb at the price of 3 francs the dozen. That is the actual price paid for the dressing of skins. I also received from the Widow Jouvin a paper puporting to be a copy from their books—manufacture's books—in which they give a detailed account of the cutting, sewing, etc. Here are 2-button gloves at 3 f., & 3-button gloves at 3 f. 10 a dozen for cutting. The small works, the little various labors, 35 centimes. Then the sewing 4 francs a dozen; thread 25 cent.; bordering 50 cent.; button-holes and other things 65 cent.; putting on the buttons 20 centimes; dressing 30 cent., bands, papers, and putting in cartons 10 cent. These various expenses they make, they come to 9 f. 35 per dozen. This paper is certified to by the central commissioner of the city of Grenoble to be a true copy taken from the books of the house of the Widow Jouvin & Co. I have here a bill which relates to the cost of the buttons. As there was a great deal of discussion here formerly with
337 regard to the number of gloves that could be cut out of a dozen of skins, I took pains to ascertain how many; but the Widow Jouvin buys a large size skin; they prefer a large size skin and pay a corresponding high price. This they said to me themselves. I wished to get a statement from at least two cutters from their house with regard to the quantity of gloves that could be cut out of a skin, and two of them certify to this. The paper bears the usual legal stamp; I will read the translation:

"We, the undersigned, certify and declare that we cut gloves for Jouvin & Co. The skins that we cut make ordinarily from one dozen of skins two dozen of gloves; two and three button. The skins for 4-button make sometimes two dozen of gloves, but rarely; often enough we can make two dozen of gloves, one with 13 and the other with 4 buttons, and one
338 with 2-buttons. The skins for six buttons make ordinarily but one dozen pair of gloves from one dozen of skins; small skins principally for this kind of glove is selected. This is a preparatory work directed by the chief of the house."

(Signed by two cutters).

Q. Are these the skins that were purchased in 1877 at the prices which you have already given?

A. Yes, sir.

Q. What did you give as the cost of the buttons?

A. We have 1,150 gross of kid buttons at 1 f. 20 c. the gross. We have 820 gross silver gilt at 1 f. 10 c. Then we have 410 gross which costs 1 f. 30 c., and 170 gross which cost 1 f. 20 c. the gross.

Q. Is this a purchase of gloves from Mr. Jay?

A. That is a proposition to sell me gloves.

Q. Have you agreed to buy any of them?

A. I have.

Q. What quantity?

A. A small quantity, a very small quantity, but he had no sam-
339 ple to show me. He showed me a sample of gloves of 39 francs, but he did not show me for 42 f.

Q. Have you any of those samples with you?

A. I have not.

Q. After he sells that small quantity to you at 42 f. is he to keep on selling you any given quantity at the same price?

A. Any given quantity at the same price, the same quality of glove.

Q. Is this in your agreement?

A. That is in the agreement. If the skins go up and the labor goes up it will be different.

Q. What is the present price of skins?

A. I don't know.

By Mr. COOPER:

Q. You would not give him a large offer until you had an opportunity to know what he was going to produce?

A. I would not. I would not give him a large order until I had an outlet for the goods.

340 By GENERAL APPRAISER:

Q. This Mr. Jay, how did you happen to see him?

A. He called at Kampman's in Paris, where my son resides and has his office.

Q. Did he call at your solicitation or your son's solicitation?

A. No, sir; he came specially to propose these 39 franc glove'. He knew that I came to Paris about that time.

Q. Had he made the same proposition to your son before you arrived?

A. That I don't know.

Q. Is he a large manufacturer or a small manufacturer?

A. Small manufacturer.

Q. Did you ever hear of him before?

A. Never.

Q. Has his gloves any reputation in the market?

A. He referred me to person' there, and I would not go myself because I left immediately after this. I was finishing up my business, and I sent Mr. L , the partner of Mr. , to take information from

341 the people to whom he said he had sold gloves.

Q. Do you know how long he has been manufacturing gloves?

A. No.

Q. Do you know the quantity he makes in a year?

A. I do not. The report from those that Mr. L saw was very good in regard to the glove. One lady there that sells his gloves has a show card of the Jouvin in her window with the medals on it, and Jouvin on her door, and he referred to her, and Mr. L went there and she reported to him that she preferred the glove that Jay made to the glove that Jouvin made, because it was really a better glove to wear and cost less money. She was paying 39 francs. I don't know whether there was any discount, but that is the glove that he proposed to me, which I didn't find as fine a quality of kid as the Widow Jouvin.

342 Q. Do you think there is any other first-class glove in France that you could buy at that same price, 42 francs?

A. I don't know. I asked a gentleman to buy for me 6¾ 2-button gloves at the Bon Marche, which were represented to be made by Trefousse, and I forgot those gloves this morning, and I sent a boy for them and I expect him here.

Q. Do you know of any first quality of glove having been recently sold in France at 42 francs?

A. I have heard that the Widow Jouvin had made a sale to a South American house. I have not heard the name of the house. I heard that she was in treaty with a South American house for the sale, and it was reported that the sale was made of the first quality of glove remaining in stock. That is not hardly a fair criterion, but it was a sale of the first quality at 42 francs for the 2-button and 45 francs for the three-
343 button. I could not tell what the goods were, not having seen them, but I don't know of any purchase made other than what I tell you of.

Q. Is there any agreement of any kind between yourself and this Mr. Jay, by virtue of which you are to become the agent of his gloves in America, in the place of the widow Jouvin?

A. None whatever, so far as Mr. Jay is concerned, in this matter. He was trying hard to enter into relations with my house, and I let him know nothing at all. I never mentioned the custom-house or custom-house difficulties, or declarations of value, or any thing of that kind, so far as he was concerned in this matter. He was trying very to sell his goods to me, and he is making an order with the expectation of getting business from me.

By Mr. WILLIAMS:

Q. Did you inquire or try to buy any first quality of gloves at
344 42 francs?

A. No; except the gloves I told you of.

Q. You did not make any effort to buy first quality of a known reputation at that price?

A. I did not.

Q. You don't know whether you could or not?

A. I know that I could from the Widow Jouvin, but I deemed that perhaps you gentlemen representing the Government might say if I made such a purchase it was simply a show made between Jouvin & myself, but they proposed to sell to me the first quality of glove for 42 francs a dozen for 2-button, and 45 for 3-button.

By Mr. COOPER:

2 and 3 francs advance for longer gloves?

A. The question did not go any further. They proposed to sell me the first quality of glove at the price of declaration and discount of the declaration. I said I didn't think it would be wise for me to make such a purchase, as I would be liable to have the Government say it was
345 a transaction entered into for the purpose of having a basis at the custom-house.

Q. Did any manufacturers tell you how cheap they would work; how small a percentage of profit?

A. No.

Q. Don't you suppose these manufacturers would be unwilling to work for 5 per cent. profit under continuous orders, under the present depressed condition of business?

A. Yes, sir; I do.

PAUL ANELLE, being duly sworn, testifies:

By Mr. McCOOK:

Q. What is your business?

A. I represent the house of Courvoisier & Co., glove manufacturers.

Q. In New York?

A. Yes, sir.

Q. Have you recently been abroad?

A. Very recently. I came back last week.

Q. When you were at their headquarters, did you ascertain anything with regard to the prices at which they were selling or offering to sell their first-quality goods, such as are shipped to this country?

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A. Yes, sir; I had occasion to. When I arrived there one of the partners of our firm told me, "We have just received a letter from an unknown party, asking us at what price we could make a large order of gloves similar to those made for the New York market—" and he handed me the letter—"and that is what we answered it," and it read in this way: "If the order was worth while in quantity, and everything satisfactory, we would make him gloves at 42 francs, self welts, and 44 francs with white welts."

Q. What would you consider an amount satisfactory for the price of the goods—the amount of the goods that would make a satisfactory order?

A. About three or four thousand dozen.

Q. Do you know whether that transaction was carried out?

347

A. I do not.

Q. What is the cost of manufacturing the Courvoisier glove that is shipped to New York?

A. At the latest information that I have in this regard is that this last quarter the glove cost, irrespective of profit, 35 francs, and I suppose a profit of 10 per cent. ought to be added; and they would cost in the neighborhood of 39 or 40 francs with the interest and profit added.

Q. How are those statements made up—the one you referred to?

A. They are made in our house every three months; we have amounts of every expense incurred in the manufacture of the goods; so much for the dressing and dyeing, etc.; and these things are added up, together with all the expenses incurred besides in the way of general expenses, and then the number of gloves made is divided, and a proportion is taken for each quality, and then we arrive, as near as any manufacturer can do, to the exact cost of the goods. These things we keep on the regular books of the house, and we can furnish a copy of those.

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Q. Are they made for public or private use?

A. They are made for our own use, and our folks have informed me that they would send me a copy taken from their books.

Q. They are willing to show that?

A. Yes, sir.

Q. And this statement shows the cost of material and manufacture for the first quality of kid glove, such as they send to New York?

A. The first quality that we send to New York.

Q. That is about 39 francs to the dozen?

A. I will tell you exactly what it is. This is a letter dated Paris, the 14th of August. It is a private letter, but it contains this information:

"We are just making the cost of our second quarter, and we
349 can establish our cost price at 35 francs a dozen for the two-button gloves of your quality, leaving for interest and profit a margin of 4f. 50c. on the price you speak of."

Q. Have you any recent information in regard to the price of skins?

A. I have to a certain extent; I am not familiar with the skin market, but when in Paris, sitting in the office all day long, I have heard many conversations in regard to that market. I have heard stated several times by men in the business, such as brokers and sellers, that the skins that could be bought, that we bought, and worth some years ago from 62 to 67 francs, had been bought this year for from 30 to 35 francs.

By Mr. LIBBEY:

Q. And last year?

A. The last purchases made.

Q. How about last winter?

A. Last winter? I have no positive information in that respect.

By Mr. McCOOK:

350 Q. You speak of the quality of goods that you send to New York. Does your house manufacture any different or superior quality?

A. Yes, sir; we manufacture different qualities of gloves; we have a house in London that we supply with a good many different qualities, and among others one superior to the one we ship here.

Q. It is superior?

A. Yes, sir.

Q. What is the price of that glove?

A. I don't know what price they are selling at now.

Q. How many qualities of gloves do you send to the London house?

A. I could not tell exactly, but to my knowledge three or four, and even more than that, because according to the order; we manufacture just as the orders run; we manufacture lamb-skin for the London house.

Q. What gloves are those? (Handing package of gloves.)

A. These are the brand of the gloves we sell in London; they seem to be the fine quality also of those goods; I think they are not of
351 the very latest make; they are superior to the ones we have here.

Q. How much superior would you think in the dozen?

A. You mean in the cost of manufacture?

Q. Yes.

A. I should say about 8 or 9 francs.

Q. Is that specimen bundle a fair average of the best London gloves?

A. I must say that I am not very familiar with the goods we ship to London, although I can see that these are a better quality than the ones we receive here.

Q. And about 8 or 9 francs better than those received here?

A. Yes, sir; it is very hard to tell on examination what the goods are, the exact value; but I know the first quality of our goods there are worth that much more at least; it depends on the colors and assortments.

Q. Could a franc price be obtained for those gloves in London?

A. Not to my knowledge; in fact I don't see how it could be done, for we sell altogether in shillings; our prices are made in shillings;

352 I never saw any price-list or heard of any transaction made in francs; in fact some of our own customers in the house were selling goods there, but the London house always billed the goods and billed in shillings.

The GENERAL APPRAISER. I understand that Mr. Wittington said that he was told the price of those gloves in London was 45 shillings; that is, a sterling price given; but he was also told by the same party of a franc price for the goods in France.

Mr. MCCOOK. My impression was that he swore that he had received a franc price in London, which we know to be an impossibility.

By the GENERAL APPRAISER:

Q. Those goods are consigned to London from Paris?

A. Yes, sir.

Q. And they are sold in London, by your house in London?

A. It is not exactly our house, but we have a partner there that
353 does not belong to the Paris house; the firm name is Hooper, Couvousier & Co.

Q. It is the name of Couvoisier?

A. Yes, sir; he is a partner in the house.

Q. You represent the house Luckemeyer, Kunoth & Co.?

A. Yes, sir.

Q. You are the importer of the Couvoisier glove?

A. Yes, sir.

Q. Do you reprerent the manufacture of that glove?

A. I represent the manufacture and the house.

Q. Then you are not exactly in the employ of Luckemeyer, Kunoth & Co.?

A. I am not at all in their employ.

Q. So you are really Courvoisier in New York?

A. Yes, sir.

Q. Your gloves are all consigned to you?

A. Yes, sir.

Q. They were formerly consigned at 44 francs, and we had a certain reappraisement when the price was reduced to 42?

A. Yes, sir.

Q. And after that the Alexandre glove came in at 42 francs?

354 A. Yes, sir.

Q. The Alexandre glove has been considered about on a par with your glove for the three years past?

A. Yes, sir.

Q. It has been invoiced higher than the Trefousse and Perinot gloves until that reappraisement?

A. Yes, sir; we might say that the Trefousse and Perinot was invoiced lower than that.

Q. You may express it in that way; what has been your experience in the glove business?

A. In what sense?

Q. Did you ever manufacture gloves?

A. No; I have not manufactured, but I have been in our factory for three or four months at a time.

Q. Did you ever buy skins for the making of gloves?
A. No, sir.
Q. What was your capacity when you were at your factory?
A. When I was in the factory I was attending to the orders of both New York and London.
Q. A sort of general salesman?
A. No; not exactly.
355 Q. You attended to the sales, however?
A. Yes, sir.
Q. You have no information as to the cost of skins beyond what you heard in the way you testified?
A. No, sir; beyond what I have seen in the running of the business.
Q. What is the date of the letter you quoted from a while ago?
A. The 14th of August. It is a private letter announcing the sending of those documents taken from the books.
Q. Your house understands the condition of the kid-glove importation in New York?
A. Yes, sir.
Q. Have you any invoices of yours in the custom-house?
I believe I have, one case just arrived.
Q. First quality of gloves?
A. Yes, sir.
Q. Upon what information do you base the statement that white welts cost 2 francs more than self welts?
A. On this information; formerly it used to cost less, but of late
356 as high-priced skins went down low-priced skins went up, for the reason that the manufacture of cheap gloves has increased wonderfully, and we use to get in our skins enough cheap ones to make borders, but of late we have not been able to do so, and we have to purchase those skins; and then the manufacture of gloves is changing in this way—they are making a great many more 3 and 4 button gloves than formerly, and the experience is that it costs less to make a self-welt glove than it does a white welt. I have been informed of these facts when in the factory.
Q. How lately?
A. A month or three weeks ago.
Q. You were in Paris?
A. Yes; I arrived here last Thursday.

A. K. P. COOPER, being duly sworn, testifies:

I want to state the testimony that I gave the other day upon the cost of producing gloves was upon a telegram, as I stated it at the time, which came erroneously and was corrected, and owing to the correction did
357 not cover the whole ground. I put my language in such a way that I supposed everything was covered, but I have got further information which gives the same detailed information which I gave before and something in addition.

They write, under date of July 12th, that they estimate the average of the raw skins this season to be 35 francs. I testified, if you remember, that we had bought skins from below 30 francs to 40 francs, and they said it should be 35 francs. In making up my statement as to the cost of gloves I was so sure of making it within the limit of the invoice price

and still show the price, I stated that you may take the maximum of the skins at 40 francs. I want to say now that they are 35 f., to which is added the majiscery—that is the tanning—that is 6½ francs per dozen skins, which is higher, I think, than any other maker. I think
358 in the Jouvin it is 6½ francs. I stated, moreover, that I would take Mr. Clark's figures of what a dozen skins would cut to produce a dozen gloves, which was 21 pairs. Our people informed us that their average is 22½ pairs, and taking that as a basis, divided into 41½ francs, cost 22 f. 64 c., as the cost of the leather. Now, the other items of dyeing, cutting, sewing, and finishing, with some other items, which makes the cost of the leather and the labor 35 f. 14 c. Now, I am surprised to see how near we came to what Anelle testifies to. I will state here that I did not know what Anelle was going to testify to, because I didn't know until this morning that he had returned. To that we add 10 per cent. for manufacturer's profits, and that brings the gloves up to 38 f. 65 c.

It was testified here that some manufacturers would be glad to work for 5 per cent. If you add on to that item a small margin for interest, which is a good deal more than the money has cost in France for the
359 last six months or the last year, take six months' interest, I think it is 6 per cent., that brings it up; so with 42 francs, 6 per cent. off, there is a large volume of profit, sufficient to cover any responsible manufacturer's expectations in that respect and interest on the investment. They state here, in reply to my request that I ask them: "You correctly stated the information so far furnished us, namely, the cost of raw skins this season, 35 francs, majiscery 6½ francs, cutting 22½ pairs of gloves." This is a reiteration, repeating what they had already stated. That is the testimony I wish to qualify, that I gave the other day.

By the GENERAL APPRAISER:

Q. After the former reappraisement of your gloves was concluded you gave me some figures, and I would like to ascertain whether I have them correctly. I took them down at the time. They were intended to represent the number of dozen of gloves that your house had imported dur-
360 ing the series of five years?

A. No, sir; I did not give you the number of dozen that the house imported. I gave you the number of dozen of sales for those five years, embracing all the goods received from this party, which were men's, women's, and children's, good, bad, and indifferent, such as had been sold at a loss, and such as had been sold at profit.

Q. That included, then, the whole number of dozens that your house had sold?

A. Yes, sir; of that make.

Q. Of the Alexandre make?

A. Yes, sir; of these particular years, because I never made up a statement exactly of all the importations at that time.

Q. The numbers represent the gloves out of which you realized the $4,018,000 for four or five years?

A. Yes, sir.

Q. What years were those?

A. That was the business of 1873, 1874, 1875, 1876, and 1877.

Q. I will give you the figures and you tell me if they are right.
361 I have for 1873 46,559 dozen.

That is right.

1874, 46,120 dozen?

A. Yes.

1875, 41,319 dozen?

A. Yes.

1876, 30,401 dozen?

A. Yes.

1877, 31,557 dozen?

A. Yes.

Q. Did those include Napoleons gloves as well as these?

A. Yes; but we never had any Napoleon gloves until last year.

Q. I think you told us in your former testimony the proportion of long or high-button gloves that you sold?

A. Yes, sir.

Q. The Napoleons you never received until 1877?

A. We may possibly have received a few in 1876, but the bulk of them were received in 1877.

Q. About what quantity of Napoleons compared with the whole amount did you receive—5 per cent.?

A. Not in 1877, because they did not come until, most of them, this year. We gave orders for them, I think about 10 per cent.

362 Q. In those sales there are scarcely any Napoleon's embraced?

A. No, sir; those sales embraced all the goods we sold at a tremendous loss; all those we sold for less than the duties, those we sold at a loss, and such as we sold at a profit. There were a great many other gloves too.

Q. They are all kid gloves that are embraced there?

A. There may be some dogskin but no lambskin—what we call dogskin, but they are a low grade of gloves, and what we call cashmere or swedes. I want to explain further, that during those five years, when you go back to 1873, the two-button gloves were invoiced at 52 francs, and in 1874 invoiced at 55 francs, and in 1875, 55 francs, and in 1876, 51, and in 1877, at 47 and 44 francs, 25 per cent. higher than the present prices. There is another element you must think of: In making your returns you must think of this, that gold in 1873 to 1874, 1875 and 1876, for
363 those four years, ranged all the way from 12½ to 20 per cent. premium. When gold was up to 20 per cent., and our prices were established at 12½, we did not change our prices, and if prices were established when gold was 20 and it went down to 10, we didn't change our prices to meet those things, but the prices moved right along the whole season.

Q. Does this $4,018,000 realized from sales represent currency?

A. Yes, sir.

Q. It did not represent gold?

A. No, sir. Then the price of gloves per dozen was very much higher. Our price for the ladies, two-button gloves to-day is $18, with certain discounts, and in 1876 they were put up to $24, 33⅓ per cent. higher than they are to-day; whether the discounts are the same or not, I don't know.

Q. When did your house come down to $18 from $19?

A. We never had a price at $19. It came down in 1873; the
364 price was $22. In 1876, $24, put down in July to $22. In November, 1876, to $20, and in August, 1877, put down to $18; which has been the nominal price ever since.

Q. That is about a year ago?

A. Yes, sir.

Q. Can you tell me whether or not your house was the first house that reduced the price of its first class gloves to $18?

A. I cannot tell you whether we were the first to reduce it, but I remember we were the first that put it up in 1876 to $22 and $24, because we had such a short assortment we could not get goods enough.

Q. I would like you to tell me, if you will, how much ought to be allowed for the price of gold in those various years?

A. It is impossible to make the average.

Q. In 1873, what was the premium on gold?

A. All the way from 12 to 18 cents.

Q. In 1874?

A. 12 to 15 per cent. is my memorandum.

Q. 1875?

365 A. 12 to 18 per cent., 1876, 10 to 15, 1877, 3 to 7.

Q. Tell me what charges you had to pay in gold?

A. Duties, freight, and insurance; your figures of the estimate of the cost to land here is correct on the average; about 30 cents in gold; 28 cents net. For instance, 30 francs subject to 5 per cent. off for cash; that is the case with very low-priced goods; it must come to nearly 30 per cent. If you take the cost of 10 and 12 button gloves, the percentage is smaller on a high-priced article.

Q. I would like to ask you some questions in regard to the private business of your house; if you have any objection to answering them you can say so.

A. If I can answer them I will be glad to do so.

Q. I understand Mr. Fortin is equal partner with the house of A. T. Stewart & Co. in the manufacture of gloves?

A. That is news to me.

Q. If I am mistaken, tell me how it is; I say so because my recol-
366 lection is that it was stated on the former reappraisement that this profit of 8 per cent., $64,000, about, a year, was divided equally between Fortin and your house here?

A. Yes, sir. That statement was put in to this effect: That instead of taking fixed commissions; whatever profit was realized for the sale of the gloves, one half of it went to Fortin, and the other half went to us in lieu of commission. He got his profit as an exporter to this country, and we got our profit as a commission merchant on the other half.

Q. Before reaching that net profit what expenses did he have to pay?

A. That is a question I cannot answer, except so far as Mr. Libbey made his statement at that time, for I never made up that account, and I don't really know.

Q. Who furnishes the capital for carrying on the business?

A. That was explained to you at the time. He makes ship-
367 ments of goods to us, and we receipt on time in round sums of 50,000, 100,000, or 200,000 francs. In March or April they go

into the market to buy their skins, and they draw upon us for 200,000 or 300,000 francs in excess for the goods we had been furnished.

Q. What interest do you get on the advance?

A. I don't think there is any. That is adjusted on the books of the Paris house. We give them an acceptance of three months, and they take that acceptance and go into the market and discount it from 1 to 1½ per cent. per annum. You wish to know in regard to these expenses. I say in a general way there is duties, freight, and insurance, and all the other expenses which accrue on this side that can be identified as belonging to a particular account, as clerk hire, etc. There is no charge made for storage or for rent. Fire insurance is included.

368 Q. How much is that?

A. Whatever the amount of stock carried would be charged at the annual rate. I don't know how long that has been done, but that is the way that comes to my mind as the natural way it would be done. Of course if there was a balance against them on the ledger account at the end of the year they would be charged 6 per cent. interest. Then there is another item in addition to that, the immense number of expenses which cannot be identified or placed to any account. There is, for instance, the salaries for all the book-keepers and all our custom-house clerks. My own salary, for instance. No portion of that can be charged, or the porters or laborers and horses and transportation of merchandise, and all those general items and packings are not charged against the account. There is where a part of the profit which Mr. Libbey said

369 we received—the 4 per cent.—is absorbed in the five years, perhaps, if we trace those charges through?

Q. You have some employés engaged, particularly in the glove department?

A. I can identify Mr. Perry as one, and perhaps he has one or two adtional clerks.

Q. That is charged against the accounts?

A. Yes, sir; but there is an immense force of book-keepers and general clerks that is not charged; that no part of their expense is charged; no part of the rent is charged.

Q. Have you any idea of the cost or percentage resulting from the charge for clerks?

A. No, sir; I don't know what Perry's salary is or the salary of any man connected with the establishment.

Q. In selling or transferring goods from the wholesale house to the retail house?

370 A. I would state still further in regard to the retail: The goods that are sold to the retail house are sold precisely as if sold to any other concern in the country, and we do not even take off the trade discount that we take off to Field, Leiter & Co.; and the goods we send to the retail house when once entered there that is the end of them so far as Fortin & Co. are concerned. If there is a profit made it goes to the retail house; if there is a loss they have to suffer. We have got goods we are selling off up town that we paid $18.00 for and are selling for 25 c. or 50 c. a pair.

Q. The only discount is 6 per cent. for cash?

A. Yes, sir; I would state still further a remark that I heard Judge

Hilton make that he didn't believe the profits of the retail paid the expenses of doing the business in the glove department, so far as the gloves are concerned. I will qualify that by saying there was so much
371 money lost on bad colors and sizes.

(It is arranged that the merchant appraiser may leave us as soon as he is obliged to, and the importers agree to be satisfied with his reading over the testimony subsequently taken after it is written out, and that the whole record as made up be sent to the merchant appraiser.)

Q. What was the number of dozen of gloves you imported this year?

A. I have not got the figures of the number of dozen imported the last year—the number imported was about 20,500 in round numbers. I never drew a statement of stocks of the different years, but you can see it from the sales. The stock on the 1st of January,

	1873, was	32,156
	1874, "	25,584
372	1875, was	18,517
	1876, "	14,956
	1877, "	30,878

The first of December, 1877, which was the 1st of January, you get it in two items, 19,823 in New York, and 8,576 in Paris. In connection with that I wish to give you the reason why the prices of these goods have gone down so within the last year, based upon the mercantile basis, and that is you will see here the 1st of January, 1877, we had a stock of 30,878 dozen of gloves, and we only sold, during that entire year, 31,000 dozen of gloves. We had the 1st of last January, a stock of between 27,000 and 28,000 in round numbers, and about the same quantity of sales. Probably every glove dealer in this country was in the same position—small sales as compared with the stock as compared with previous years; and the consequence was that they could not give any new orders, and the
373 price of gloves went down. You lose sight of the fact that in 1874 or 1875 we were making at the rate of 1,000 dozen a week, but the last six months we have been obliged to reduce the production to 500 dozen a week.

Q. I remember that circumstance, and I base my idea of what you were getting on that very statement, 500 dozen a week before I received this other statement.

A. We had got an accumulated stock. Our stock the 1st of last January and the previous January was more than double what it was the first of January, 1876, when we put the price up to $24. We put it up then irrespective of what we had on the other side, because we had a small stock and could not supply the demand. Now we are forced to put the price down because we are carrying large stock.

374 Q. Does your wholesale house charge any commissions whatever for making sales to the retail house of gloves?

A. None whatever. I explained to you that they stand precisely on the same footing that Arnold & Constable, or James McCreery, or anybody else that was buying gloves.

Q. Then this profit, which is divided equally between Fortin and yourself?

A. It is the profit divided after the expenses, so far as we can identify them, is charged off against it, and the cost of the goods, and what we receive.

Q. I understand you to say you are unable to identify all those expenses?

A. There are a great many expenses attending the running of the business which we cannot identify as belonging to any particular stock. The book-keeping force and transportation, porters, and custom-house
375 force that belongs to the whole general business of the house and we cannot charge it off; and we do not charge it off to any particular expense; but expenses that can be identified as belonging to that particular business we charge against it, and what is left is divided.

Q. You have given us those expenses, haven't you?

A. No; I have not.

Q. Could you enumerate them?

A. No, sir; I don't know but that we might; but I don't know what that has to do with the account. It seems to me you might take the statement of our house in that respect without proof.

Q. Do you know what percentage those expenses would amount to?

A. I never made an estimate.

Q. What do you think of your glove, compared with other first-class makes that come to this market?

A. I am not expert in gloves, but it is my duty to believe and make everybody else believe, if I can, that they are as good as anybody's
376 gloves that come to this market. I could not form an opinion of my own knowledge.

Q. Are they as good as any glove that is made in France?

A. From the testimony of experts here, that I have reason to believe tell the truth, I do not think they are.

Q. You rely entirely upon what they say?

A. Entirely; because I have never sold any gloves which go to the English market.

Q. Do you think that your glove has retained its standard of quality during the last few years?

A. Most decidedly, I do not think it has. I have made bitter complaints in my correspondence, during the last three or four years, that the goods were depreciating in standard.

Q. You thought formerly they were better than other gloves?

A. Yes, sir; I thought they were, and always claimed that they were the best gloves that came to this country. I made complaints last fall
377 so bitterly in reference to a particular kind of goods. I told them we would not give them any more orders.

Q. Have you any idea of the percentage of children's gloves that you receive?

A. No, sir; we have a large stock. We have a stock of some 3,000 dozen.

Q. How was it during those five years you have spoken of?

A. I judge during those five years that the sales of children's gloves was a little larger than it has been in late years, on the ground that everybody is economizing, and it is an expensive luxury, and they do without them. I know our orders for the coming season are comparatively small.

Q. What is your invoice price of children's gloves?

A. I do not remember. If there is any on that invoice it will explain it.

Q. What is the selling price?

A. I don't remember; I only remember the selling price of the
378 leading prominent things and the invoice price of the leading prominent things.

By Mr. WILLIAMS:

Q. On a former examination you stated that there was a pretty large percentage of loss by reason of gloves spotting, and depreciating in stock, and splitting, and tearing, and so on?

A. I particularly stated there was a large loss in consequence of bad colors.

A. Do you remember the percentage?

A. No, sir; I never gave you any percentage; I never made any figures at the percentage. I merely made the statement that we sold so many dozen at a heavy loss.

Q. What do you estimate as your percentage in the loss from all causes; depreciation of stock, &c.?

A. I never formed an estimate.

Q. Why?

A. Because it would be a very complicated problem to find that out. There are some goods that are worthless, some worth 25 c. on the dollar, and some 50 c.

Q. This question came up in getting at the foreign market value
379 by figuring from the selling price and these losses came in?

A. Yes, sir; you lose sight of the fact that a few years ago these goods were invoiced at very much higher prices. Gold was higher, and we got higher prices all the way through; but we are not now getting so high profit or percentage as we did then, I don't think.

Q. Don't you meet with similar losses by reason of depreciation, &c., in other lines of goods?

A. Yes, sir.

Q. In what other particular lines?

A. Take silk goods, for instance; if you have a piece of silk of a bad color you can sell it at a small loss compared to what you can a bad glove, and especially a white glove becomes perfectly worthless after a time on account of the thread becoming rotten and also the leather.

Q. Do these losses occur in other lines of goods, whether consigned or purchased goods?

380 A. We have scarcely any other consigned goods. In the kid-glove business you have to keep a very large assortment or you cannot do any business at all.

Q. Do you invoice your purchase goods below their cost or market value in order to provide against these losses? The point I want to make is to get your opinion whether or not gloves should be invoiced to make a provision for these losses if purchased goods. Why is the foreign market value of consigned goods different from purchased? Isn't the foreign market value the same?

A. No, sir.

(Question repeated.) Do you invoice your purchased goods below their cost or market value in order to provide against these losses?

Mr. LIBBEY. There is no objection to answering that; that thing never has been done in the history of the house.

381 The feature about the case is this: We are not the owners of that merchandise. Fortin & Co. are the absolute and unconditional owners of it. They consign that merchandise to us. If that merchandise was lost on the voyage over here, we should account to them as owners. When we receive it here in New York and take the property, then, in lieu of a commission of ten per cent., which we get from all our consignors, we say we will divide the profit. In years prior to the last three or four that was a good thing, but since the decline in trade it has been a very bad thing. In lieu of a commission of 10 per cent., which he would pay us, and which we would insist upon, we have taken 8 down to 5; 4 down to 2½ or two as our share; and that is all we have got.

The GENERAL APPRAISER. I would like to ask Mr. Libbey or Mr. Coople a question as to whether the low price, relatively, at which

382 kid gloves are now selling has not been owing, in great measure, to the sharp competition that has been growing up here in America between agents of various foreign manufacturers of kid gloves.

Mr. LIBBEY. No; I don't think that is so at all, for this reason: When Mr. Stewart personally made this connection with Mr. Fortin his stipulation was, "You, as owner, to protect yourself, must invoice these goods at a fair market value;" that in the wording Mr. Fortin, to protect himself, and also Mr. Stewart, on behalf of his business, to protect it, had the stipulation that at any time the house of A. T. Stewart & Co. were at liberty to take any or all of these consignments to the account and for the account of A. T. Stewart & Co., at the price at which they were consigned. You see what a fool Mr. Fortin would be if he did not invoice those goods not only at cost but at a profit to himself. They had a right to take them to

383 account as soon as they landed here. Where would be his profit on 300,000—400,000 dollars that we are holding for him?

The GENERAL APPRAISER. When was that agreement made.

Mr. LIBBEY. That was made in 1873, and it is still in force to-day. That is our connection to-day with them. We have a right to take any of his property at that invoice price—what they are invoiced at and what we pay duty on. Mr. Fortin, on the other hand, consigns them to us at this price, protecting himself by his profit and by his cost. In closing this account we are to give him six months' notice, but we are bound to take the merchandise that comes and is on the way and received the very day after the commencement of that notice at the invoice price at which they are consigned to us for the six months succeeding the notification. We are forced to take the merchandise at the price at which it passed the cus-

384 tom-house, so that Mr. Fortin, not having an agent here, would not be forced to start a business here to make a sale of merchandise here after the duties have been paid on it.

The GENERAL APPRAISER. Are those goods purchase goods that we have now under consideration?

Mr. LIBBEY. I could telegraph to Mr. Fortin and say, "We will take to account the invoice under consideration;" it would be a purchase. We have that privilege if we notified him. During the six months after the notification, or from the first of January, when we would probably notify him,

all the subsequent consignments that would be coming along we would be obliged to take them at the price at which they were consigned to us. You can see equity of the whole thing. Mr. Fortin, to protect
385 himself, he must pay the cost of manufacture, and he must put a profit on them.

Supposing we had 500,000 dollars of this stuff on hand, and Mr. Fortin had been undervaluing his goods 25 per cent., it would ruin the man if we took them to account. On the other hand, if we were obliged to take them to account, what a stupid man he must be to place himself in our hands in that way. I think there is a great misunderstanding in regard to the question of market value in the glove business.

Testimony closed.

386 E. A. MERRITT resuming:

Q. What is the substance of your conversation with Mr. Quigle?

A. I recall no special conversation about the merits of the case or the evidence. Mr. Williams, in that department, I think, was charged with some matters, or was a witness in connection with it, and whenever he called at the office there was very likely some conversation; I don't recollect anything specific.

Q. Was anything said with respect to the undervaluation of kid gloves?

A. I presume there may have been some opinion expressed on his part. I am not certain about that.

Q. Didn't Mr. Williams or Mr. Quigle say substantially that Messrs. Stewart & Co. were undervaluing the kid gloves in their invoices?

A. I don't recollect any such thing.

Q. Wasn't that subject mentioned?

A. Very likely; I don't know.

Q. What do you recollect about it?

387 A. Nothing specific. They had been advanced by the appraiser and it was very likely the subject of conversation; such an expression might have been made.

Q. Were not the merits of that undervaluation mentioned?

A. Discussed with me?

Q. Yes.

A. No, sir.

Q. Didn't you have any expert report to you about those values?

A. Specifically?

Q. Yes.

A. Nothing except what was in the case.

Q. Nothing except those records that have been offered or what is supposed to be covered by them?

A. In discussing some particular features of the evidence I recall now a conversation with Mr. Balch.

Q. That I have not asked you about. I have simply asked with whom you had it. He was your subordinate, was he not?

A. Yes, sir; I was going to add, the naval officer.

388 Q. You did not request either of them to report to you as an expert, did you?

A. No, sir; I had an abstract of the evidence prepared in the seventh division, the law division for convenience, after my examination; before I took the examination personally I had it prepared. That was for convenience of referring to the testimony.

Q. That was prepared in your office by your aid and assistant, Mr. Phelps, or under his direction?

A. Yes; or Mr. Baleh.

Q. Did you know anything about the fair market value of the Trefusse, or Perrino, or Couvessier glove in Paris?

A. By the evidence in this case.

Q. Have you any other knowledge than that?

A. I had not at that time.

Q. Did you ever compare one with another for purposes of arriving at their value?

A. No, sir.

Q. Did you ever compare either of them with the Alexandre glove for the same purpose?

389 A. Not for the purpose of determining the value. I think I saw samples of all these gloves, and as the evidence applied to all three cases under reappraisement it was necessary to examine the whole case to determine either one, because by stipulation I understood the testimony taken at the time of this reappraisement was by consent to be a part of the case.

Q. That was in records A & B?

A. Yes; but the evidence came in reappraisement, even before I was collector, as part of the case.

Q. Did anybody ever make a suggestion to you that these gloves were undervalued?

A. What do you mean by that?

Q. Did anybody ever make a verbal suggestion, other than that contained in these papers, that these gloves were undervalued?

390 A. I cannot say. It is very likely that such a suggestion may have been made in some quarters, not to affect my determination in the case. I will answer it generally, that I knew the importance of this case, and I refrained from participating in discussion regarding it, and I took it up intending to be entirely unembarrassed, and I may have overheard conversation in regard to these kid gloves. I am very certain the representatives of the importers did talk some.

Q. Did you hear suggestions from anybody that these goods were undervalued?

A. I knew that the appraiser had so determined by his advancing the goods.

Q. Did not anybody else besides the appraiser?

A. I don't recollect.

Q. Don't you recollect of some particular person?

A. No, sir; I do not.

Q. I perceive upon this exhibit marked "Exhibit D," that was read in evidence, there is this endorsement, "Seizure waived October 12, 1878," bearing the initials of your deputy, Phelps. Why was seizure

391 waived in this case? Why was that endorsement put on? What led to that endorsement?

(Objected to by defendant's counsel.)

The COURT. Ruled out.

(To this ruling plaintiffs' counsel then and there duly excepted.)

Q. Had you ever any experience to enable you to act as an expert as to kid-glove values?

(Objected to by defendant's counsel.)

The COURT. I exclude it.

(To this ruling plaintiffs' counsel then and there duly excepted.)

Plaintiffs' counsel then read in evidence the following letter:

"GENERAL TREASURY REGULATIONS OF 1874.

"[Form 99.]

"*Importer's notice to collector pending reappraisement.*

"AUGUST 10, 1878.

"SIR: As we consider the appraisement made by the United States appraiser too high on leather gloves, A. T. S. and Co., L, 462, im-
392 ported by A. T. Stewart & Co., in the Mosel, from Bremen, we have to request that the same be reappraised, pursuant to law, with as little delay as your convenience will permit.

"Very respectfully,

"A. T. STEWART & CO.

"To Hon. E. A. MERRITT,

"*Collector of Customs.*"

Cross-examination by defendant's counsel:

Q. Upon what reports was your decision in this case based?

A. I concurred with the general appraiser in his report of October 10th, in which "the collector accepts the general appraiser's advance." J. D. Brush is written. It was done by my directions.

Q. It was between that report of October 10th and the merchant appraiser's report of September 19th that you decided?

A. Yes.

Redirect examination:

Q. You did not concur in the report of September 19th?

393 A. I did not act upon that report.

Q. You did not concur in it, did you, in finding the standard value of the gloves at fifty-two francs?

A. I say I concurred in the other report, and therefore did not act upon this report at all. I had not yet reached my conclusion.

Q. Did you concur in Mr. Ketcham's report, made September 19th, that fifty-two francs was a fair estimate of the market value?

A. Did not act upon that.

Q. Was it, in your judgment, a fair estimate of the market value?

A. I don't think it is necessary to answer that question.

Q. I ask you that question.

A. From the light before me now and subsequent evidence I am inclined to think that Mr. Ketcham's report was a proper report.

Q. In 1878, October or September, was it your judgment that 52 francs was a fair market value for the standard gloves in question?

394 (Defendant's counsel objected, and the question was renewed in the following form:)

Q. I ask if, in your judgment, at that time, acting as an appraiser under the statute, 52 francs was a fair dutiable value for those gloves? As a matter of fact, what was your judgment at that time?

A. I had not come to a definite conclusion.

Q. In your judgment at that time, was 49 francs a fair dutiable market value for these gloves, and had you not come to that conclusion prior to October 10th, prior to writing this letter of that date?

A. I had come to no definite conclusion as to the definite price, or intimated any figure to anybody.

Q. Did you never indicate 49 francs, or was it never indicated to you in conversation between Mr. Ketcham and yourself, prior to writing these letters of October 10th?

A. I will answer that in the negative, most positively; I say no positively.

395 Q. Was 47 francs mentioned or suggested by either of you?

A. No, sir; it is possible that I might have said to the appraiser that suggestion had been made from the importers or some party as to some figure, but as to between the appraiser and myself there was no hint of figure of value agreed upon in any way whatever.

Q. Or suggested? Was it not suggested that it should be put at enough to carry a penalty, or about enough to avoid a penalty, or in reference to a penalty?

A. I think the suggestion was made there in conversation, not in writing, representing to the importers if it fell below the penalty they would be quite content.

Q. So that subject was discussed?

A. It came from that source.

Q. At 47?

A. There seemed to be a good deal of opinion that it would reflect upon the standing of the firm somewhat, but there would be no remittal of the advance.

396 Q. That was suggested between Mr. Ketcham and yourself in conversation?

A. No, sir.

Q. Was not that suggestion mentioned in conversation?

A. I don't think it was; it is possible I may have said some party had made such a suggestion. My conversation with Mr. Ketcham I can state if it is desired.

By the COURT. You might as well state it.

A. The subject was the regularity of proceedings in case of errors, or when mistakes may have been discovered or new evidence after the transmittal of the report, as the usual practice had been. It had been found to be the practice, and is the practice now; any time before the liquidation of an entry and no affirmative action of the collector, where there is a difference, it is held; when I issue my decision I can recall it.

Q. That is, you may issue an order for reappraisement?

A. Not after I have rendered a decision.

397 Q. I mean any time before liquidation?

A. Under certain conditions, even where there is an agreement between the general and merchant appraisers.

Q. Then it comes back to the general and merchant appraisers to act upon your reference?

A. It would be in such cases.

Q. In this case did it go back to the merchant appraiser to act upon your reference at all?

A. It is not a question of order at all.

Q. As a matter of fact, it did not go back for the merchant appraiser to act upon your reference?

A. I don't know whether he saw it; he probably did. The general appraiser transmits not only his own report, but the reports of the merchant appraiser as well.

Q. Did you send this merchant appraiser's report back with this letter?

A. Everything.

Q. Did you send word to the merchant appraiser to act upon this letter of October 10th?

398 A. I don't think I did.

Q. And does it not appear from the records of your office that the merchant appraiser did not act upon this letter of October 10th?

A. That letter contains no order or direction whatever.

Q. Well, as the results of this letter the merchant appraiser did not act, did he?

A. Not to my knowledge.

Recross-examination:

Q. You claimed the right to order a reappraisement at any time before your final action?

A. I only referred to the statutes.

Q. Did you make any order at all in this case?

A. Not at all.

Q. There was no order for a reappraisement and no order for a reference?

A. No, sir.

Q. You simply sent it back to the appraiser for reference, and he sent a final report?

A. Yes, sir.

MARSDEN C. PERRY was then called, on behalf of plaintiffs, and, being sworn, testified:

399 I am in the employ of the plaintiffs, in the glove department, and am familiar with the market value in Paris of ladies' kid gloves as covered by the invoice in question.

Q. What was the fair market value in Paris, in the spring of 1878, of standard kid gloves similar to those covered by this invoice from the Mosel, which you have seen?

(Objected to by defendant's counsel.)

Mr. TREMAIN. We wish to renew by this question, now, at this stage of the case, the application of our right to test the market value before a jury. We have substantially completed the evidence in respect to the ir-

regularity. We show there has been no proper appraisement. We show a case that entitles us to enter into the question of the fair market value.

The COURT. Wait. Let me take your points. That there has been no proper reappraisement?

400 Mr. TREMAINE. Yes; and the collector has not fully and fairly examined the goods. He did not see the goods evidently; without which there can be no valid appraisal.

Plaintiffs' counsel here reads articles 426 and 427 of Treasury regulations of 1874, and also article 421. They are as follows:

Customs regulations, 1874.

TREASURY DEPARTMENT.

ART. 426. At the time fixed for reappraisement the collector will send to the appraiser-at-large and merchant appraiser the invoice or invoices of the merchandise to be examined or appraised; the storekeeper or other officer having charge will deliver to them the samples or packages ordered for examination, and they will proceed to examine and appraise in the manner pointed out by law.

The importer or his agent will be allowed to be present and offer
401 such explanations and statements as may be pertinent to the case.

The valuation having been determined, the appraisers will report the same to the collector, according to Form No. 100.

ART. 427. In case the appraisers do not agree, they will make separate reports to the collector, who will decide between them, adopting one or the other valuation, as he may deem just; and the appraisement thus determined will be final, and the duties will be assessed accordingly.

ART. 421. The collector, on receiving such notice, will call on the local appraisers for an appraisement and special report thereof in due form, at the same time notifying them of the appeal, and requiring them to inform him whether additional samples or packages of the merchandise be necessary to a full compliance with the law. If such samples or packages be required, or the collector deem the examination of an additional
402 number expedient, he will, in case the merchandise has been delivered to the importer, make requisition (Form No. 97) upon the importer to return the entire importation.

He also refers to a circular of the Treasury Department of April 30, 1877, synopsis 3222:

Synopsis decisions 3222.

TREASURY DEPARTMENT,
Washington, D. C., April 30, 1877.

To collectors of customs and others:

Chapter 6 of title 34 of the Revised Statutes provides that goods subject to a duty ad valorem shall be charged with duty upon the actual market value or wholesale price thereof, at the time and place of exportation, in the principal markets of the country from whence exported to the United States, with the addition of certain charges and commissions therein

specified; and it is made the duty of the appraisers to ascertain,
403 estimate, and appraise such foreign market value or wholesale price by all reasonable ways and means in their power, and report the same to the collector.

The practice has lately obtained in some of the manufacturing centers of Europe on the part of manufacturers shipping all their goods in consignment to an agent in the United States for sale, and some embarrassment has occurred in ascertaining the proper dutiable value of such goods, from the fact that there were no actual sales upon which to base the market value.

The actual market value of imported goods is ordinarily to be estimated by ascertaining the price at which the owner holds his goods for sale, the price at which he freely offers them in the market, the price which he is willing to receive for them if sold in the ordinary course of trade.

When goods are not sold for consumption in the markets of the country of production, but are sold for export to countries other than the
404 United States, the value at which such sales are made may properly be taken into consideration by the appraisers in ascertaining the value of similar goods shipped to the United States.

When no sales are made in the country of production, either for consumption or for export, the market value of similar goods of other manufacturers actually sold should be ascertained and be taken into account.

In cases where the manufacturers ships all his goods to the United States on consignment for sale, and the market value cannot be ascertained by the methods before indicated, it should be fixed by reference to the market value of the component materials of the goods, at the time and place of manufacture, with the expense of manufacture and a fair manufacturer's profit added, and the appraised value in such cases cannot be less than the cost and profit so ascertained.

405 It is to be understood that evidence of the cost of production of imported goods is in all cases to be regarded as a proper subject for consideration in determining dutiable values, and appraisers are allowed, under the law, the greatest latitude in procuring information as to what is the true market value of imported merchandise; but it will be borne in mind that duties can in no case be assessed upon an amount less than the invoice or entered value, nor can the appraisement be made at less than that value.

JOHN SHERMAN,
Secretary.

And to articles 431, 432, and 443, Treasury regulations.

Customs regulations, 1874.

TREASURY DEPARTMENT.

DUTIABLE VALUE OF IMPORTS.

ART. 431. In determining the dutiable value of imported merchandise there shall be added to the actual wholesale price or general market
406 value at the time of exportation in the principal markets of the country from whence the same shall have been imported into the

United States, or to the cost, if the cost exhibited in the invoice exceeds the market value, the cost of transportation, shipment, and tran'shipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water, to the vessel in which shipment is made to the United States; the value of the sack, box, or covering of any kind in which such goods are contained; commission at the usual rates, but in no case less than two and one-half per centum brokerage; export duty, and all other actual and usual charges for putting up, preparing, and packing for transportation or shipment.

All charges of a general character incurred in the purchase of a general invoice shall be distributed pro rata among all parts of such invoice, and every part thereof charged with duties based on value shall be
407 advanced according to its proportion.

All articles paying specific duty by grades shall be graded and pay duty according to the actual value so determined.

All additions made to the entered value of merchandise for charges shall be regarded as part of the actual value of such merchandise.

ART. 432. The term "country" as used in the law is to be regarded as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

What are to be regarded as the "principal markets" of a country in any given case is for the determination of the appraisers.

It is a question of fact, and not of law, and the decision of the appraisers is conclusive upon the Government and the importer.

ART. 443. The appraisement of the goods in the above cases
408 must exhibit the true market value or the wholesale price of such merchandise in the principal markets of the country whence originally shipped on such destinations at the period of exportation.

409 He also refers to chapter 6, title 34, of the Revised Statutes, as the title covering the subject; also see 2901, R. S.

The COURT. The objection is sustained, and the testimony is excluded.

(To which ruling plaintiffs' counsel then and there duly excepted.)

Mr. TREMAIN. We offer by this and other competent witnesses to show the fair and actual market value or wholesale price of the goods in question, at the time and place of exportation, in the principal markets of France.

The COURT. It is ruled out.

(To this ruling plaintiffs' counsel then and there duly excepted.

SIMON SELIGMAN was then called, on behalf of plaintiff, and sworn.

PLAINTIFFS' COUNSEL. Before we ask any questions we will state
410 to the court what we propose to do. It is claimed on the part of the Government that, all these goods being substantially consigned, one way of getting at the value is to take the manufacturer's cost with a fair manufacturer's profit added. It is claimed also that goods are sold in Paris of other manufacturers similar to these. Now we are willing to take either horn of the dilemma. We are willing to test the values of other similar gloves in Paris, or we are willing to take the cost of manufacture. The evidence we have offered goes to show the actual value of these goods

in their wholesale price. We wish to detail that a little more by offering a competent witness who is familiar with the cost of manufacturing goods of this kind, so that we get at their price by the cost of manufacture with fair manufacturer's profit added; and we say that the evidence before the appraiser, as well as the evidence before the collector, shows that
411 under the instructions of the Treasury Department that was the proper way in this case to estimate value; and for the purpose of presenting that question to the court and jury, and adducing the proper evidence, we have now called this witness to the stand.

Q. Your firm is what?

A. Trefousse & Co. The gloves are consigned to Wilmerding, Hoguet & Co., here; they take all of their manufacture.

Q. And are their goods substantially of the same value as the Alexandre goods?

A. We consider them in the market valued with other goods.

Q. Are you familiar with the cost of manufacture of such gloves?

A. I am.

Q. Will you please state what are the elements of the cost of manufacture of goods of this kind?

A. I am sorry I was in haste, and did not get everything translated (looking at a paper in his hand), and I am not very conversant with the French.

412 DEFENDANT'S COUNSEL. The gentleman has proved that the witness upon the stand is an expert. I must object to any further examination as to the cost.

Mr. TREMAIN. I offer to prove by this witness what is the fair manufacturer's cost of similar goods to goods in question, and manufacturer's profit added, as tending to show that the rules governing the appraisement have not been followed.

The COURT. The testimony is excluded.

(To which ruling plaintiffs' counsel duly excepted.)

Plaintiff rests.

Defendant rests.

The COURT. Is there anything for the jury?

Mr. TREMAIN. We ask to go to the jury, sir, upon all the evidence in the case, and are ready to do so if the defense have rested their case.

413 The COURT said, "You ask to go to the jury on what?"

Plaintiffs' counsel claimed to go to the jury upon the question (1) of whether the collector, acting as appraiser, fully and fairly examined the goods. (2) Upon the question whether the goods were invoiced at their fair and actual value in the principal markets of France at the time of exportation. We ask also to go to the jury upon the question (3) of the fair examination of the goods by the general appraiser, associated with the merchant appraiser, when referred to him for that purpose on the 10th of October.

We ask also to go to the jury on the question (4) whether the facts stated in the two protests have not been established by the evidence.

We also request the court to charge the jury that if the collector did not fully and fairly examine the goods, then the verdict need not neces-
414 sarily follow this appraisement.

We ask the court to charge also that the general appraiser not

having re-examined the goods after he made his first report, the jury are not concluded by his report at 49 francs, or the collector's action thereon.

We ask to go to the jury on the question (5) whether the appraiser followed the evidence before him or disregarded it; also on the question (6) whether the collector disregarded the evidence or was negligent in his appraisal.

To the refusal of your honor to charge in accordance with our several requests we take separate exceptions, and we ask to go to the jury on the several points indicated.

Plaintiffs' counsel said nothing further.

The court made no further inquiry, but no claim was here made to submit to the jury any question of fraud on the part of the collector or
415 appraiser, and no claim was made during the trial that any excluded evidence was offered for the purpose of showing, or did show or tend to show, fraud on the part of the Government officers.

The court having refused to charge in accordance with any of said requests, the plaintiffs' counsel separately and duly excepted.

Defendant's counsel (the testimony on both sides being closed) moved that the court direct a verdict for the defendant.

The COURT:

GENTLEMEN OF THE JURY: In the opinion of the court there is no substantial question of fact for your consideration, and you will therefore render a verdict in favor of the defendant.

(To which direction plaintiffs' counsel then and there duly excepted.)

A verdict was then rendered accordingly.

And inasmuch as the said rulings of the court and the said sev-
416 eral exceptions thereto as hereinbefore stated do not appear by the record of said trial in the judgment record, therefore, on the prayer of the plaintiffs' counsel, the foregoing has been settled, this 7th day of Sept., 1880, at the April term of said court aforesaid, and directed to be filed as and for the bill of exceptions in this case.

N. SHIPMAN, *Judge*. [L. S.]

(Endorsed:) United States of America, southern district of New York. Henry Hilton and William Libbey, composing the firm of Alexander T. Stewart & Co., against Edwin A. Merritt, collector of the port of New York. Bill of exceptions. Alexander & Green, pl'ffs' att'ys, 120 Broadway, N. Y. U. S. circuit court. Filed Sep. 28, 1880. John I. Davenport, clerk.

417 *Assignment of errors.*

Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and eighty.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of A. T. Stewart & Co., plaintiffs in error,

against

EDWIN A. MERRITT, COLLECTOR OF THE PORT of New York, defendant in error.

Afterwards, to wit, at the said October term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Wash-

ington, came the said Henry Hilton and William Libbey, by Alexander and Green, esqs., their attorneys, and say that in the record and
418 proceedings aforesaid there is error in the several rulings of the court, to which exception has been taken, and that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant against the said plaintiffs, whereas by law of the land the said judgment ought to have been given for the said plaintiffs in error against the said defendant in error, and the said plaintiffs pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appears more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs, may be restored to those things which they have lost by reason of said judgment.

ALEXANDER & GREEN,
Attorneys for Plaintiffs in Error.

419 (Endorsed:) U. S. Supreme Court. Henry Hilton et al., plaintiff in error, vs. Edwin A. Merritt, defendant in error. Assignment of errors. Alexander & Green, plaintiffs' att'ys, 120 Broadway, New York City.

Service of a copy of the within is hereby admitted.
New York, Oct. 6th, 1880.

STEWART L. WOODFORD,
Att'y for Def't.

U. S. circuit court. Filed Oct. 6th, 1880. Joseph M. Deuel, clerk.

420 Supreme Court of the United States.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of A. T. Stewart & Co., plaintiffs in error,
against
EDWIN A. MERRITT, COLLECTOR OF THE PORT of New York, defendant in error.

And afterwards, to wit, at the October term, 1880, of the said court, the said Edwin A. Merritt, defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceed-
421 ings as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STEWART L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. Henry Hilton & ano., plaintiffs in error, aga'st Edwin A. Merritt, defendant in error. Joinder in error. Stewart L. Woodford, United States attorney, attorney for def't in error.

Due service of a copy of the within is hereby admitted.
October 8th, 1880.

ALEXANDER & GREEN,
Attorneys for Plaintiff" in Error.

U. S. circuit court. Filed Oct. 11, 1880. Joseph M. Deuel, clerk.

422 Circuit court of the United States of America for the southern district of New York; in the second circuit.

HENRY HILTON AND WILLIAM LIBBEY, composing the firm of Alexander T. Stewart & Co.,
vs.
EDWIN A. MERRITT.

Know all men by these presents that we, Henry Hilton, William Libbey, George B. Butler, and John M. Hopkins, all of the city, county, and State of New York, are held and firmly bound unto the above-named Edwin A. Merritt in the sum of five hundred dollars, to be paid to the said Edwin A. Merritt, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly
423 by these presents. Sealed with our seals and dated the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above-named Henry Hilton and William Libbey have prosecuted a writ of error issuing out of the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of New York, of the April term of said court, 1880:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute the said writ of error to effect and answer all damages and costs if they shall fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

424 GEO. B. BUTLER. [L. S.]
JNO. M. HOPKINS. [L. S.]
HENRY HILTON. [L. S.]
WILLIAM LIBBEY. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of September, 1880, before me.

[L. S.]

HENRY H. RICE,
Notary Public, N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry Hilton, William Libbey, George B. Butler, and John M. Hopkins, being duly sworn, depose and say, and each for himself says, that

he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

GEO. B. BUTLER.
JOHN M. HOPKINS.
HENRY HILTON.
WILLIAM LIBBEY.

Sworn to this 24th day of Sept., A. D. 1880, before me.
[L. S.] HENRY H. RICE,
Notary Public, N. Y. City.

The foregoing bond is approved.
Oct. 5th, 1880.

SAM'L BLATCHFORD.

425 (Endorsed:) U. S. circuit court. Henry Hilton Wm. Libbey, composing the firm of Alexander T. Stewart & Co., against Edwin A. Merritt. Bond for damages and costs. Alexander & Green, pl'ffs' 120 Broadway. U. S. circuit court. Filed Oct. 5, 1880. Joseph uel, clerk.

426 The United States of America to Edwin A. Merritt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of the October term, 1880, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Henry Hilton and William Libbey, composing the firm of Alexander T. Stewart & Co., are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 5th day of October, in the year of our Lord one thousand eight hundred and eighty.

SAM'L BLATCHFORD.

427 (Indorsed:) U. S. circuit court, so. district of New York. 5712. Henry Hilton & ano'r vs. Edwin A. Merritt. Citation. Alexander & Green, att'ys for plaintiffs, 120 Broadway, New York City.

(Stamped:) U. S. circuit court. Filed Oct. 5, 1880. Joseph M. Deuel, clerk.

Due service of a copy of the within citation is hereby admitted.
New York, Oct 5, 1880.

STEWART L. WOODFORD,
U. S. Attorney, Att'y for Def't in Error.

(Indorsement on cover:) No. 161. Henry Hilton & William Libbey, composing the firm of Alexander T. Stewart & Company, plaintiffs in error, vs. Edwin A. Merritt, collector of the port of New York. S. New York C. C. U. S. Filed 20th October, 1880.

110-97

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883. NO. 161.

HENRY HILTON and WILLIAM LIBBEY, composing the firm of ALEXANDER T. STEWART & CO.,

Plaintiffs in Error,

against

EDWIN A. MERRITT, Collector of the Port of New York,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

TREMAIN & TYLER,
167 BROADWAY, N. Y.

C. G. BURGOYNE, Printer, 57, 59 & 61 Park Street (Law Telephone 587), N. Y.

Supreme Court of the United States.

HENRY HILTON and WILLIAM LIBBEY, composing the Firm of ALEXANDER T. STEWART & CO., Plaintiffs in Error,

AGAINST

EDWIN A. MERRITT, Collector of the Port of New York, Defendant in Error.

October Term, 1883.
No. 161.

BRIEF FOR PLAINTIFF IN ERROR.

This action was brought to recover an alleged excess of duties (Record, folio 55) exacted by the defendant, as Collector at the Port of New York, on certain importations of gloves, imported by steamer *Mosel*, in June, 1878, and entered at the Custom House by plaintiffs' firm of Alexander T. Stewart & Co.

The "decision" (record, folio 55) upon which the excessive duties were exacted was seasonably protested against, and the duties were paid under protests made in order to get possession of the goods.

The original entry was made for warehouse on June 21st, 1878 (rec., fol. 31), and the withdrawal entry of the packages on which the excess of duty occasioning this controversy was exacted was made on October 23d, 1878 (rec., fol. 30).

The Secretary of the Treasury, after the plaintiffs' appeal to him, affirmed the decisions of the Collector and the exactions of duty protested against (rec., fol. 64).

The protests (rec., fol. 57 to 60) claim "that there has been no regular or lawful appraisement" warranting duties beyond the entered value; that there has been imposed a penalty of twenty per cent. without cause; that an appeal was made (fol. 392) from the action of the appraiser, and a reappraisement ordered by the general appraiser and a merchant appraiser designated by the Collector for that purpose; that on such reappraisement such errors were committed in the proceedings as to vitiate any result thereof whereby that result could be treated as a "regular or lawful appraisement;" that as a matter of fact and of law there was *no* result from said reappraisement, inasmuch as the merchant appraiser made one report, sustaining the importer's invoice and entered value (*i. e.*, 42 francs per dozen on the standard article), and the general appraiser made another report, favoring a different and higher value (*i. e.*, 52 francs), and that thereupon the Collector did not perform his duty under the law, that he never decided for the one or the other of said reports, and never himself made a regular and lawful appraisement; and, even if he did, he committed errors in doing so, and also arrived at an illegal and erroneous result in excess of the true dutiable value, and that he unwarrantably imposed the penalty, and so decided as to exact altogether, and including said penalty (of $769.40), the amount of $1,037.40 in excess of the proper and lawful duty.

The said report of the merchant appraiser (Mr. Hugh Auch incloss) is dated September 19th, 1878, and corresponds (rec., fol. 39) in its valuation of the standard glove at 42 francs, and in its total valuation (16,613.10 francs) with the importers' invoice (rec., fol. 26) and entered valuation of (francs 16,613.10) the merchandise in question.

The said report of the general appraiser is also dated September 19, 1878 (rec. fol. 216), and its total valuation states the value of the standard glove at 52 francs, and amounts altogether to 20282.85 francs.

The total valuation by which the Collector assessed duty (see record, page 13), is 19313.50 francs, based on a valuation of the standard glove at 49 francs, which is an advance over the invoice value of 16.2 per cent.

Before arriving at this "decision," which is the decision under controversy in this suit, the Colletcor wrote a letter to the general appraiser, dated October 10, 1878 (for which see rec. fol. 45),

to which, under same date, the general appraiser replied, adhering to his convictions as first certified to, but "willing" that the Collector should adapt himself to an other figure (fol. 52). Here read this correspondence at record pages 18 to 21, to which is attached the alleged "amended" report or "Exhibit D" of record page 17.

After September 19, 1878, the merchant appraiser did nothing, and no appraisement proceedings were had or pretended to have been had intermediate Sept. 19 and Oct. 10, '78.

A new report, or a new appraisement, by himself and the general appraiser, or either of them, was not undertaken; nor was any reappraisement by them or by either of them ordered by the Collector (rec. fol. 234–398).

The Collector himself, before his final action upon the invoice, took no proceedings to aid him in determining the market value (rec. fol. 227–228), and was not permitted to testify at the trial what, if any, experience he had to enable him to act as an expert as to kid glove values (fol. 391); nor did the Collector, for the purpose of determining value, compare the glove in question (the Alexander glove) with other gloves (rec. fols. 388–9). He testified he was not an expert (fol. 234), and he examined no samples with a view to appraise this particular invoice (fol. 236).

In the course of the trial various errors were committed in excluding plaintiff's evidence, in refusing to submit any question to the jury, and in the directions for a verdict, which errors, together with the law and evidence claimed to be applicable thereto, are stated in the assignments of error, general statement of the issues, and the Points hereinafter made.

THE FOLLOWING ERRORS ARE ASSIGNED:

1. IT WAS ERROR to exclude (rec. fol. 67) at the trial, the record of the proceedings* had before the merchant appraiser and general appraiser on the reappraisement of the invoice in question. This record included the testimony and various documents officially before those officers, and subsequently before the Collector, as stated by him in his testimony (rec. fols. 233 and

*There was no question as to sufficiency of proof of the records offered in this case. See folio 99.

389). This record was offered in its entirety and by selected portions. It comprised the official files under Sec. 2922, U. S. R. S., relating to the invoice in question. But the Court ruled that the "evidence was not *competent*," and exception was duly taken to such ruling (record folios 65–67).

2. IT WAS ERROR to exclude (rec. fol. 69) at the trial the offered testimony of the witness, *Hildreth*. He was concededly an expert in foreign market values of the goods in question—the Alexander kid glove. He had bought them in the principal markets of France at or about the time of the importation under controversy, and stated the commercial standard by which gloves were valued,* and his evidence was excluded upon the Government's objection that the question of market value could not be inquired into until an irregular or unlawful appraisement had been shown. The plaintiff excepted to this exclusion, and the error is assigned.

1st. Because the Collector in this case was the only legal appraising officer and all of his "decisions" on any question when duly protested against are open to examination in the courts.

2d Because no appraisement had in fact been had.

3d. Because the acts already shown, claimed by the Government to constitute an appraisement, evidenced an irregular or unlawful proceeding.

4th. Because the Court, having refused to receive in evidence the official record created by the customs officers under *U. S. R. S., sec. 2922*, and evidencing the acts performed by them in and about this invoice and entry, and showing what did, in fact, transpire before those officers and the whole action, if any, taken by the appraisers and by the Collector upon the matters of record touching the official assessment in question,—the testimony of the witness Hildreth should not be made to depend on "some irregularity or unlawful proceeding" with reference to the appraisement, which otherwise might have appeared; and

5th. Because the right to inquire into the *merits* of any duty adequately protested against, is guaranteed by statute, and cannot, even if not so guaranteed, be constitutionally interfered with by Congress.

3. IT WAS ERROR to exclude (rec. fol. 70), the record of the

*Ladies' two-button gloves, invoiced by plaintiff at 42 francs per dozen.

testimony of same witness delivered before the general and merchant appraiser; such record evidence tending to sustain plaintiff's protests and to exhibit want of power on the part of the Collector (upon the record thus shown to have been before him), to make his pretended appraisement protested against; and otherwise tended to show the irregularity and unlawful proceedings previously held by the Court to be essential prerequisites to the admission of evidence on the merits of the dutiable value.

This excluded record, pages 26–28, shows that there was evidence before the customs officers of a price in Paris for 8,000 doz. standard Alexander gloves at 42 francs; and this, in connection with the rest of the excluded record, is claimed as showing an absence of proof of any other value.

4. IT WAS ERROR (rec. fol. 77) to exclude the record of testimony of one Cooper, delivered before the merchant appraiser and general appraiser, as that particular part of the record (the whole of which had been previously (fol. 67) excluded as *incompetent*) tended to show that the customs officers had before them—either properly or improperly, as the law or Treasury regulations in application to this invoice may be construed—*the cost of the manufacture* and actual price in Paris of the goods under appraisement; and also as such excluded record tended to show want of power to make the appraisements protested against, and to sustain the importer's protests and to show in the appraisements "that which amounts to a fraud, unquestionably" (fol. 77). This last contention of importer's counsel is made in terms applicable to all the excluded record. An appraisement without any evidence on which to base it, conducted in defiance of law and Treasury regulations, without examination of goods or samples, and resulting in an extravagant and excessive exaction of duty and in the imposition of a penalty, all of which was sought to be shown, is aptly characterized in law as "that which amounts to a fraud." But evidence tending to sustain such a fraud was excluded as incompetent, and exception taken thereto; and thus the *claim was made* on the importer's behalf that there was *fraud on the part of the Government officers.* If, in the *opinion* of the Court below, such evidence did not *tend to* show such fraud, the statement of such an *opinion* in another

part of the case does not minify the effect of the offer, or claim, or record, or evidence, as excluded under the ruling recorded at folio 78 of the bill of exceptions (Rec., p. 28–29).

This excluded testimony tended to show that the appraising officers had before them proof of the cost at which the gloves in question could be and were imported at wholesale and in the usual course of business (rec., pp. 28 to 35).

5. IT WAS ERROR to exclude (fol. 94) the record of the testimony of Mr. James McCreery, delivered before the appraising officers, as tending to show that they had before them the best evidence of foreign market value, and as enabling the Court to enquire whether any weight was given or should have been given to his testimony under the circumstances. This witness was direct and circumstantial in fixing the dutiable, or foreign market value, at forty-two francs (see rec., fols. 106–110, 129); and in connection with other excluded evidence, shows that the appraising officers had *no evidence* to sustain a higher value.

6. IT WAS ERROR to exclude (fol. 133) the record of the evidence of one Alex. Morten, a Government agent, who testified to what he had done in London; which record would show that the appraising officers proceeded irregularly and against law and Treasury regulations in entertaining testimony about London price, and in receiving Morten's evidence, and a certain report of his agency; and that while under such examination the appraiser excluded the importer's enquiry of the witness' (fols. 157–159) interest in and connection with the case. The excluded record shows what the importer claimed (fol. 169) in respect to the appraiser's entertaining such testimony. This excluded evidence tended to show that the appraising officers had before them no proof to contravene the entered value as sworn to by the importer and certified to upon the invoice, by the U. S. Consul (fol. 28).

7. IT WAS ERROR to exclude (fol. 189) the records of the evidence of Paul Ancelle, delivered before the appraising officers. It tends to show they had before them evidence to sustain the invoice, and nothing tending otherwise; evidence of the price in Paris and of the cost of manufacture.

8. IT WAS ERROR to exclude (rec. fol. 213) the record of the protest and objection filed with the appraising officers, and subsequently filed with the Collector when the records containing that protest were filed with him, as he admits in his testimony

(fols. 389–233), formally protesting against entertaining abovementioned testimony of Merten, and the report unverified of one Starring, and other evidence—hearsay and otherwise—of English prices. This protest thus shown to have been made and disregarded, and setting forth a valid objection to the proceedings, the Court below has declined to entertain; and by its repeated exclusions of the whole and any material or selected portions of the records, shut out from the consideration of the Court the disregard of orders, regulations, and of law committed by the customs officers. This error, excluding the formal protest of counsel, recorded before the appraising officers, and filed with the Collector, exacting the alleged unlawful duty, is relied upon as fatal. Such protests are competent *evidence* in all cases.

9. IT WAS ERROR to exclude (rec., fol. 215) record proof, showing that evidence was received and considered by the customs officers, under the protest of the importers, of the value of other gloves in England.

10. IT WAS ERROR not to permit (rec., fol. 226–7) the Collector to testify in answer to the direct question whether Exhibit C (fols. 37 to 41) and Exhibit L (fols. 216 to 217) were not the official reports to himself upon the appraisements in question of the merchant appraiser and general appraiser respectively. Nor was this error cured by proof that these papers were received at about their dates. The excluded interrogatory called for the Collector's answer as to whether those papers were in fact or not the *official appraisements* on which were based further proceedings towards assessing duty. The importer was entitled to that evidence from the Collector, as tending to sustain the protests, and its exclusion is assigned as error.

11. IT WAS ERROR to exclude (fols. 238–9) the record "Book B," containing evidence of a Mr. Whittington, which evidence defendant testified was before him, and read as part of the proceedings on this invoice. This excluded record tends to show that the appraiser's officers received and considered testimony of a witness who substantially admitted his own incompetency to testify, as he did to Paris wholesale values of the goods in question (fols. 313–315); and in that connection the letter of a foreign merchant to a Philadelphia merchant (fol. 317), which letter was not legal evidence.

12. IT WAS ERROR to exclude (fol. 324) the record of the pro-

ceedings before the Collector, upon which he testified he acted in making the assessment and decision protested against. The Collector, as he admits (fols. 387, 389, 228, 233, 234, 238), made no appraisement, and performed no other act than to make a decision upon this record, which he on the witness stand identifies. The decision so made is protested against, and therefore under judicial scrutiny. The right to spread that record, containing, as it did, further protests, before the Court for what it may be worth in assault or support of that decision, is fundamental, and the exclusion of such record, as being the official proceedings upon the invoice in question, was excepted to (fol. 324), and is here assigned as error.

13. IT WAS ERROR to exclude (rec., fol. 324) after the evidence given by the Collector at pp. 78 to 82 (see fol. 228, 233, 234, 238), the offer of the further record of the additional evidence of the witnesses McCreery and Ancelle. It was before the Collector, and (being set forth at pp. 112 to 121) tends to show that no other price than 42 francs, on the basis of wholesale dealing or of cost of manufacture, could fairly and legitimately have been assessed by the customs officers.

14. IT WAS ERROR to exclude (fol. 325) the record of the additional evidence of the witness Cooper, which was before the Collector. Such excluded evidence (*vide* same rec., fols. 357 to 385) tended to sustain the protests, and to show disregard of fact and actionable neglect on part of defendant in enforcing the exacted duty payment. This excluded record showed the defendant to have had before him proof as to the actual purchase price of the invoice in question, which, in any case of doubt, and in absence of fraud on the part of importer, should regulate the dutiable value. That it did not do so in this case tends to show such *official exaggeration as to amount to fraud* on the importer.

15. IT WAS ERROR to exclude (fol. 391) the Collector's testimony as to the facts leading to his order to "*waive seizure*," as proven (fol. 55). All facts within the Collector's knowledge, or officially acted upon by him, touching this invoice, are evidence going to the merits of the protests, and the integrity of the assessment and exaction under judicial scrutiny in this action. The exclusion of such facts in response to questions as to what facts led to a particular order—material, because without such order duties would not have been paid until after the Govern-

ment had successfully conducted a suit for forfeiture—is here assigned as error.

16. IT WAS ERROR not to permit the Collector (fol. 391) to state his experience in valuing gloves.

17. IT WAS ERROR, after the proof of irregularity and of the absence of a proper and lawful appraisement (fols. 389–390) by the Collector or otherwise, and in view of the Department regulations cited on pp. 135, 136, 137 of record, and the proof of non-compliance therewith, to exclude again the testimony offered of witness Perry, an expert, called (at fol. 399) to show the actual market value of the goods in question. The exclusion under this offer, renewed again at fol. 409, is here assigned for error.

18. IT WAS ERROR to exclude proof of the cost of manufacture of goods, similar to the goods in question. (See grounds of offer through witness Seligman, at record, fol. 410–412.) The exclusion is here assigned for error.

19. IT WAS ERROR not to submit to the jury the question whether the Collector, acting as appraiser, had fully and fairly examined the goods, there being some evidence from himself tending to show that he had not done so. This refusal, on plaintiff's request (fol. 413), is here assigned for error.

20. IT WAS ERROR to refuse to submit to the jury whether the goods were invoiced at their fair and actual foreign value.

21. IT WAS ERROR likewise to refuse to submit whether there was any fair examination of the goods by the general appraiser associated with the merchant appraiser, when the Collector referred the invoice back on October 10th.

22. IT WAS ERROR likewise to refuse to submit to the jury whether the facts stated in all the protests were true.

23. IT WAS ERROR for the Court to decline to charge the jury that if the Collector did not fully and fairly examine the goods, then the verdict need not necessarily follow the result of any of the appraisements (fol. 414).

24. IT WAS ERROR also, for the Court to decline to charge the jury that if the general appraiser had not reëxamined the goods after papers referred to him by Collector's letter of October 10th, then his so-called amended report (of 49 francs) was not conclusive, either upon the Collector or the jury.

25. IT WAS ERROR to decline to submit to the jury whether

the appraising officers did or did not follow the evidence before them.

26. IT WAS ERROR also, to decline submitting whether the Collector disregarded the evidence, or was negligent in his appraisal (fols. 414–415).

27. IT WAS ERROR for the Court to charge the jury that there was no substantial question of fact, and to direct a verdict for defendant, which instruction is here assigned for error.

A General Statement of the Issues.

The erroneous contentions of the Government on which the rulings in the Court below were chiefly based are, that evidence is not admissible in any court to prove that "the value of imported merchandise is greater or less than that fixed by the appraisers."

This claim is also expanded to apply to a Collector's "decision" respecting values, when, as a result of a disagreement between the merchant appraiser and general appraiser on a reappraisement regularly called by importer, the Collecter decides between them. As all decisions of the Collector are by statute open to protest, it is not clear why his decision between two disagreeing officials is exempt from judicial scrutiny.

Against these views the plaintiff in error insists that the courts are bound, in every proper case where protest is duly made, to determine (1) whether the appraising officers have followed the law, or (2) have reached a meritorious conclusion. A regular appraisement may be binding on the Executive Department of the Government; but if duly protested against, is *not* conclusive against the importer in asserting his rights before the Judiciary Department.

Congress has not pretended thus to debar the citizen of his rights, and has not left the power to take away one's property by force with a functionary whose decisions are not subject to inspection by the courts. It is doubtful if any attempt on the part of Congress to do so would stand the test of the Constitution. It would be a violent presumption, in the absence of express words to that effect, to assume that Congress had attempted a measure of such doubtful constitutionality.

If the Revised Statutes by any fair interpretation will work any such result, it is submitted that in so far they are beyond the constitutional power of Congress. But they do not. Properly construed, they expressly affirm and regulate the citizen's right of action at common law for all overpayments of duty, either because of rate or amount.

An "assessment" of duty may be final for the purpose of levying and collecting the tax so assessed; but when collected and paid with due protest, the process and legal merits of the assessment and levy are subject to judicial inspection. There is no provision to the contrary, and the right of such review by the courts is expressly reserved in the statutes.

Moreover, common law actions for alleged excessive taxes rest upon the illegality of the transaction which culminates in the involuntary payment of money to defendant. This illegality flows from the facts evidencing the character and description of the goods; for on these facts depend their dutiable character. Their *value* is just as material an item of their dutiability as any other characteristic of the merchandise.

If that value has in fact been exaggerated, there is illegality in the transaction to the extent of that exaggeration. For the measure of the money payment involuntarily forced by means of this quantum of illegality, the common law action affords the remedy. The right to sue is unquestioned. The right to prove this illegality for what in fact it may be shown to amount to, is nowhere abridged; has not been attempted to be interfered with by Congress, and being a common law right, would require express language of statute before being held to be abrogated. There is no language found in the statutes expressly or impliedly limiting judicial inquiry into the merits of a transaction legitimately brought into the courts; and no such limitation can be construed except as the Court, in any particular case, may apply the law to the evidence in the fair determination of the merits of the case then before the Court.

The right to sue an officer of the Government in an ordinary action of assumpsit having been granted by act of Congress, the *merits* of the claim upon the facts and the law constitute the only judicial restriction. These merits are to be determined by the Judiciary Department of the Government, without the bias or prejudice that may result from the acts of any executive

functionary. True, presumptions attend official acts; but such presumptions may be destroyed by evidence.

In the case at bar, then, the PRINCIPAL QUESTIONS at issue may be stated as follows, any one of which being answered in favor of the plaintiff in error must reverse the judgment below:

FIRST. Whether, after an appeal from the appraiser to the general appraiser and merchant appraiser, and a subsequent liquidation and payment under protest of duties based on such reappraisement, the importer has not the right in his action at law to sustain his protest by proof of the truth of his allegations that his merchandise has been excessively appraised, and therefore that he has been charged with duty on a value beyond the true foreign market value (*i. e.* the legal value), and also with a penalty unjust because resting on the aparaiser's caprice as compared with the importer's oath on entry still asserted to be true.

SECOND. Whether, after similar appeal, reappraisement, payment and protest, the importer in his suit at law may not prove all that transpired by or before each and all of the appraising officers, with a view to establish the fact that they acted contrary to law or department instructions in arriving at the results to which they certified.

THIRD. Whether, under similar circumstances, the importer may not prove that the appraising officials did not proceed by "reasonable ways and means," and did entertain unreasonable considerations and illegal evidence.

FOURTH. Whether, after similar appeal and reappraisement, when the merchant appraiser and general appraiser disagree and certify to different results, the Collector is not bound to adopt the one or the other of such certificates as the basis for his liquidation of duty.

FIFTH. Whether, in case of such disagreement, the Collector has the right to request or receive, or the general appraiser to deliver, a second official report from the general appraiser (and without the knowledge of his co-appraiser, the merchant appraiser,) and to substitute such a *third* certificate for those

already filed as *the* official conclusion of the reappraisement by the merchant appraiser and the general appraiser. If the latter's *first* certificate is not *functus officio*, is not his *second* certificate nugatory unless united in by acquiescence or by express disagreement of the merchant appraiser; and can either officer, with or without the other's concurrence, recall or review his previously delivered official act?

SIXTH. Whether in every case of such agreement the "decision" of the Collector for or against one or either or both of such reports is not amenable upon the merits to the same judicial scrutiny as any other "decision" of the Collector touching "rate and amount of duty" paid under protest.

SEVENTH. Whether, in such cases of disagreement the Collector is not bound to appraise the goods in the same manner and form and by the same law and regulations as all other appraisers.

EIGHTH. Whether the citizen has not a right to subject all *penalties* to the test of trial by jury.

NINTH. Whether, in any event, sufficient irregularities of procedure have not been shown in the case at bar to vitiate any alleged appraisement of the invoice in question, and to leave the importer free to sustain its integrity by proof before a jury.

These questions will be considered together under the following

POINTS.

I.

This is not a case assailing the general principle, that "when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and the exercise confided to his or their discretion, the acts so done are binding and valid as to the subject

matter;" because (1) such acts are made reviewable in a suit at law; and (2) customs officers have neither power nor jurisdiction to exact duty beyond the amount regulated by law; and (3) the lawful duty depends on ascertained facts resulting from inspection of imported merchandise in connection with proof or knowledge of its character, description, uses and value.

The importer's tax depends on the law as found to be applicable to the facts relating to his goods in each case. The right to bring an action involves the right to determine these facts, so far as they are essential to be ascertained, in testing the rate and amount of the tax. Unless the scope of enquiry by the Court has been expressly limited by statute the facts and law pertinent to the merits of the tax are to be adjudicated.

If the importer has been obliged to pay a penalty on the pretense that he declared on oath falsely in making entry, the truth of that oath is to be ascertained; for, being true, such penalty is illegal.

If he has been charged duty on an amount beyond what the law says shall constitute the true and actual foreign market value, that fact is to be ascertained in order that the Court may declare such extra exaction illegal, unless some provision of law suspends the legitimate province of the Court in its determination of a suit brought for that purpose. Where is there any such statute? None can be found.

II.

The statutes in force at the time of the payment in controversy declare:

U. S. R. S. Sec. 3010. All money paid to any collector of the customs, or to any person acting as such, for unascertained duties or for duties paid under protest against the *rate* or *amount* of duties charged, shall be placed to the credit of the Treasurer of the United States, and shall not be held by the collector, or person acting as such, to await any ascertainment of duties, or the result of any litigation in relation to the rate or amount of duty legally chargeable and collectible in any case where money is so paid (*Ch. 82, Act 1839, 5 Stat. at L., 348, Sec. 2*).

Sec. 3011. Any person who shall have made PAYMENT UNDER PROTEST and in order to obtain possession of merchandise imported for him, to any collector, or person acting as collector, of any money as duties, when such AMOUNT OF DUTIES was not, or was NOT WHOLLY AUTHORIZED BY LAW, MAY MAINTAIN AN ACTION, in the nature of an action at law, which shall be TRIABLE BY JURY, to ascertain the validity of such demand and payment of duties, and TO RECOVER BACK ANY EXCESS so paid. But no recovery shall be allowed in such action unless a protest (*in writing and signed by the claimant or his agent, was made and delivered at or before the payment, setting forth distinctly and specifically the grounds of objection to the amount claimed*) and appeal shall have been taken as prescribed in section twenty-nine hundred and thirty-one.

This section is a re-enactment of the Act of Feburary 26, 1845 (5 Stat. at L., p. 727), which this Court held in *Barney vs. Watson (2 Otto, 453)*, was repealed in 1864. It was in that case decided that Secs. 14 and 15 of Act of June 30th, 1864 (Ch. 171, 13 Stat. at L., p. 214), "supplied the Act of 1845, and repealed it by implication."

The incorporation, therefore, of this section 3011 into the Revised Statutes creates a new condition of legislation, adds additional safeguards to the importer's right of action in all cases at common law and under the Act of 1864, and removes any possible doubt existing prior to the revision of the subjection of all protested duty payments to the suit at law, "*which shall be triable by jury.*" The revival in 1874 of this Act of 1845 must be accorded the necessary legal consequence. Moreover, the revisers obviously designed to preserve these statutory safeguards, for after the decision in *Barney vs. Watson*, instead of repealing the section as obsolete or for incongruity, Congress amended it (laws of 1877) so as to require an appeal to the Secretary of the Treasury before instituting suits against collectors. Thus, in the presumed acquiescence of the state of the law announced by that decision of this Court, Congress in 1877 reaffirms its various existing enactments as well as the common law right by which the importer's rights of action in all cases of protested duty payments are carefully preserved.

Ch. 69, Act of Feb'y 27, 1877 (19 Stat. at L., 247), in amending the revision declares: * * * Section three thousand and eleven is amended by striking out all after the word "protest" in the eighth line, and by adding the words "and appeal shall

have been taken as prescribed in section twenty-nine hundred and thirty-one." * * *

Sec. 2931 * * * The collector's decision "as to the rate *and amount* of duties" and the dutiable costs and charges (what are the dutiable costs?) shall be final and conclusive against all persons interested therein, *unless* the importer, *within ten days after the ascertainment and liquidation by the proper officers of the customs* (what else can this clause imply except that the protest is to follow and to be based, if necessary, on the action of these officers, *i.e.*, the deputies, examiners and appraisers?), "give notice in writing to the collector on each entry if dissatisfied with his decision, etc., etc., etc.; and shall within thirty days after the date of such ascertainment and liquidation appeal therefrom to the Secretary of the Treasury. *The decision of the Secretary on such appeal shall be final and conclusive*; and such vessel and merchandise or costs and charges shall be liable to duty accordingly UNLESS SUIT SHALL BE BROUGHT, etc., etc., etc."

Sec. 2932. The decision of the respective Collectors of Customs as to all fees, charges and EXACTIONS OF WHATEVER CHARACTER, * * * or on merchandise and the dutiable costs and charges thereon, * * * or by any of the officers under them, in the performance of their official duty, shall be *final and conclusive* * * * UNLESS the like notice that an appeal will be taken from such decision to the Secretary shall be given within ten days, and UNLESS such appeal shall actually be taken within thirty days from making of such decision; and the decision of the Secretary of the Treasury on such appeal *shall be final and conclusive*, etc., etc., etc., UNLESS suit shall be brought, etc.

Ch. 193, Act of June 22, 1874 (18 Stat. at L., 186, Sec. 21), provides:

The liquidation of duties shall "after the expiration of one year from the time of entry, in the absence of fraud and *in the absence of protest* * * * be final and conclusive upon all parties." (Congress uniformly assumes that payment under protest is *not* conclusive).

Ibid, Sec. 14. Certain additions to get at market value may be made by appraiser or collector "either in items or in gross at such price or amount as he shall deem just and reasonable (which price or amount shall *in the absence of protest* be conclusive); * * * which addition shall constitute a part of the dutiable value of such goods, wares and merchandise and

shall be collected as provided by law, in respect to duty on imports."

Here is an affirmative provision recognizing the *in*conclusiveness of appraisements, and the want of finality in the market value arrived at in certain cases when protest has been filed. Indeed, the United States Supreme Court, in the case of *Arthur vs. Goddard*, 6 Otto, 146, recognizes the same right. In that case the dutiable market value certified by the appraiser was successfully questioned. It cannot be true that *section 14* would recognize the right of protest in the suit against the conclusiveness of commissions, port duties, expenses of shipping, export duties, cost of packages, boxes, incidental expenses, packing, shipping or exportation from the country or place where purchased or manufactured, when all those items, by previous statute, are a part of the elements constituting the actual market value to be arrived at, if the law already existing prohibited any such judicial inquiry after protest. But it did not. Congress recognized the right of the courts to inquire into any subject affecting the market or dutiable value after protest had been seasonably made.

Sec. 21 of the same act above mentioned also recognizes such right.

If there was no other statute than *Ch. 193* of the Laws of 1874, in force when the Revised Statutes took effect (June 22, 1874), the courts would construe the foregoing sections of that Moiety Act as acknowledging the right of an importer to maintain his common law action triable by jury to test the validity of any alleged illegal action, when duly protested against.

But there is a further section of the same act (Sec. 26) providing:

"That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

It is certainly inconsistent with its provisions that the importer may protest against items of market value, concerning which there is more room for dispute than concerning any other item, if, after protesting and bringing suit, the appraisement provided for by section 2930 of the Rev. Stat. by the merchant appraiser, or by the Collector, when the merchant appraiser or general appraiser disagree, "shall be final and be deemed to be the true value," notwithstanding protests, appeal and suit.

If duties are to be levied according to such appraisement, *notwithstanding* a protest, appeal and suit, and if the courts are compelled to follow such appraisement notwithstanding protest and the institution of a suit at law, then the foregoing provisions in sections 14 and 21 of chap. 193, Act of 1874, are of no value. If the latter be inconsistent with the alleged conclusiveness resulting from section 2930, then the Rev. Stat. must yield to these later enactments.

But construing them together, sections 2930, 2931, 2932, 3010, 3011, 5995, 5996 and 5601 are all consistent with each other and with the right of trial by jury fortified as it is by chap. 193, Act 1874, and chap. 69, Act of 1877.

III.

The statutes in force in 1878 leading up to the alleged final and conclusive character of an appraisement and the alleged exclusion of the appraiser's determination on dutiable value from any judicial scrutiny (which it is submitted is *not* the interpretation to be given to sections 2930, 2931, 2932, 3010 and 3011), declare:

Sec. 2906. When an *ad valorem* duty is imposed, the Collector shall cause the actual market value or wholesale price to be appraised, *and such appraised value shall be considered the value upon which duties shall be assessed.*

If the merchant has purchased the goods he must state in his invoice what they cost him. The object of the appraisement is to prevent understatement. If goods purchased or consigned come invoiced too low, the importer may add, on making his entry, what he deems equivalent to the dutiable value. On this addition, also, there is the protection to the Government of the appraisement.

SEC. 2900. If the appraisement adds ten per cent. or more to the importer's figures, an additional or penal duty of twenty per cent. is laid.

SEC. 2911. In certain cases, the best article in a package, charged at an average price, should fix the value as the average of the whole.

SEC. 2907 provides that a variety of items for packing commissions, brokerages and charges, shall form part of the dutiable value. Suppose there are gross errors in appraising these items? That there is a clear remedy by an action at law, similar to the present one, is not only the undisputed law, but the right of the importer long since recognized by the Government.

The new tariff law of 1883 (ch. 121, sec. 7) repeals this section, and also expressly enacts that no items of this character shall hereafter be included in estimating the dutiable value. Suppose that the amount of such illegal items be added by the appraisers to constitute what in his opinion constitutes the market value under sections 2900 or 2906 or 2929, and he thus appraises the goods to his own satisfaction. This is now being done in New York.

Is such appraisement conclusive upon the Courts? May not the method and amount and merit of such appraisement come under judicial inspection in the suit at law brought after paying under protest duties on such an appraisement? Not if the ruling below in the case at bar is correct that the conclusion of the appraiser upon all questions of market value is absolute and final.

The contention of the Government in this case that this is the effect to be given to sec. 2930 is therefore broad and far reaching, and interferes with the whole course of legislation.

SEC. 2925. The importer may be required to give a bond that he will produce proof respecting the dutiable character of his importation.

SEC. 2928. All merchandise must be appraised before admitted to entry. If a reduction of duties be claimed because of damage, the damage is to be appraised; and if the merchant be dissatisfied he may have all the rights provided for in Title 34—*i.e.*, to have a reappraisement or to bring a suit at law, or both.

SEC. 2929. The Collector may deem the appraisement too low, and may order a new one; "and *may cause* the duties to be charged accordingly."

SEC. 2930. If the importer "shall be dissatisfied with the appraisement," and shall have complied with the foregoing requisitions, he may forthwith give notice to the Collector in writing of such dissatisfaction; on the receipt of which *the Collector* shall select one discreet and experienced merchant to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants, familiar with the char-

acter and value of the goods in question (suppose they are not, is there no remedy?), to examine and to appraise the same *agreeably to the foregoing provisions* (But suppose they act contrary to the "foregoing provisions," above cited, is there no remedy?); and, if they shall disagree, the Collector shall decide between them (How? Shall he decide contrary to law, or to evidence, or on the appraiser's record, or on new evidence, or by guess-work, or as the Treasury Department may desire, or as his caprice may dictate? Suppose he disregards the facts of the case, the record, the law, or a clear conscience, what happens? Nothing, except that); the appraisement thus determined shall be final, and be deemed to be the true value (*i.e.*, there shall be *no more appraisements*), and the duties shall be levied accordingly.

That is all—*the duties shall be levied.*

This is directory, or it may be mandatory upon the *Collector;* but the statute does not say that the *levy* is conclusive.

On the contrary, every levy and assessment of duties is open to further question by protest. So the collector is bound to *levy* according to the secretary's order respecting *classification;* but such levy does not conclude the Courts upon the propriety of such classification.

SEC. 2931. The Collector's decision "as to the rate AND AMOUNT of duties," and the dutiable *costs* and charges (what are the "dutiable costs?"), shall be final and conclusive against all persons interested therein, UNLESS the importer, *within ten days after the ascertainment and liquidation by the proper officers of the customs* (what else can this clause imply, except that the protest is to follow, and to be based, if necessary, on the action of all of these officers, including the appraisers?) give written notice of dissatisfaction, and if still without redress after an appeal to the Secretary, to bring suit. The Supreme Court say in *Unkart vs. Arthur* (*infra*), that when suit is thus brought the acts of the department officials are *not* conclusive.

The Secretary may with reason decline to entertain a discussion of market value, because the executive officers are directed to receive the appraisement, as exhibiting the true value for the purposes of collecting duty. But the courts are not enjoined from ascertaining in such suit if duties were levied on the true and actual value contemplated by the previous sections. On the contrary, the right to go into Court on all subjects incident to the "ascertainment and liquidation" of duties is expressly granted in any case touching either rate or *amount* of duties protested against; or, by *Sec. 3011*, paid under protest.

Sec. 2932 gives the same right as to all exactions of whatever character.

Sec. 3011 again affirms this right—it may well be called inalienable right—of suit. Any person paying under protest money as duties, *when such amount was not, or was not wholly,* authorized by law, may maintain an action in the nature of an action at law, *which shall be triable by jury,* to ascertain the validity of such demand and payment of duties, *and to recover back any excess* so paid.

What language can be broader? Here the common law is put into the statute.

Whatever question may have been mooted prior to the Revised Statutes, *there is no room for two conclusions respecting the importer's right under the statutes since 1874 to bring any protested duty payment to the test of a Court and jury.* Then the question to be tried is: What part, if any, is improperly exacted? Have all officials performed their duty?

As to the relation of these sections to prior statutes see their history (*infra*).

The Revised Statutes have been quoted at length, because they essentially differ from the condition of the statutes assumed by the learned Assistant Secretary of the Treasury in his opinion to the Secretary on plaintiffs' appeal. He says that "no evidence is admissible in any court to prove the value of the merchandise is greater or less than that fixed by the appraisers." Then the right to sue would be nugatory. The plaintiff would not be able to establish that the appraiser utterly violated the law in his method of arriving at market value; or that he included or omitted items of valuation which the statutes and regulations thereunder directed him to disregard or to estimate. The cases cited in aid of this *dictum* arose under a very different condition of law than that established in 1874 or in 1864.

The case *e. g.* of *Bailey vs. Goodrich* (2 Clifford, 600) arose upon an importation in 1861, and throws no light upon the interpretation of a statute passed in 1864 or in 1874. The appraiser's *classification* there was *held* not to be final, *because* the Act of 1851 as to the finality of appraisements did not apply to goods subject to *specific* duty only. Besides the report of that case shows no appeal for a reappraisement.

NO CASE HAS ARISEN SINCE 1864 HOLDING THAT THE ACT OF JUNE 30TH, 1864 (WHICH IS REENACTED IN SECTIONS 2931, 2932) DOES NOT PERMIT ANY AND ALL JUDICIAL INSPECTION TOUCHING AMOUNTS

OF DUTY EXACTED, WHETHER BY EXCESSIVE APPRAISEMENT OR OTHERWISE. All the cases relied upon for such contention occurred under statutes prior to the comprehensive provisions of the Act of 1864. See the dates of such cases and corresponding history of the laws under which they arose (*infra*).

IV.

THE GOVERNMENT CLAIM

the inscrutability of market value, because of the closing phrase of Sec. 2930, U. S. Rev. St.

The last phrase of this section, although taken from Sec. 3 Act Mch. 3d, 1851 (ch. 38, 9 Stat. at L., 629) does not read as found in original act. If it did, the revision in that respect would have been inaccurate, as not stating the condition of that law as it existed in December, 1873 (Sec. 5995, U. S. R. S.). Sec. 2930 properly omits the concluding clause, according to which the duties should be levied, "any act of Congress to the contrary notwithstanding," which was the reading of 1851. Laws on the subject since 1851 having been passed, repealed, construed, reënacted and revised, this concluding clause properly disappears in the revision.

Indeed, Sec. 2930 simply directs how duties in the cases it describes are to be *levied*, namely, in accordance with the appraisement determined under it. Thus duties are to be "*levied*" under numerous other sections, defining the duties of officers and the character of the merchandise. The phrase that duties are to be "levied" in a described manner, is a constantly recurring one in all the tariff laws; and has never been held to conclude the Courts. Thus, too, the duties are to be "levied" under section 2931, according to the ascertainment and liquidation of the Collector in *all cases*, which shall be final and conclusive against all persons interested therein, *unless* there shall be protest, appeal and a suit at law.

There is the same high character of conclusiveness yielded to the decisions of the collector in one section as there is to the determination of the appraisers in Section 2930, and there exists the same right of review in the Courts against both decisions.

Whether this be so or not WHEN THE MERCHANT APPRAISER AND GENERAL APPRAISER DISAGREE AND THE COLLECTOR DECIDES BETWEEN THEM, SECTION 2931 EXPRESSLY PROVIDES THAT THE LATTER'S "DECISIONS" SHALL BE SUBJECT TO REVIEW AT THE DEMAND OF THE IMPORTER.

V.

Any other interpretation of Section 2930 would be in derogation of a common law right as guaranteed by the U. S. Constitution.

While insisting that the proper and only legitimate construction of the statutes in force at the time of this importation sustains the importer's right to establish judicially that an excessive duty has been exacted under protest, no matter whether the grounds of that excess be an alleged unfair penalty, an excessive market value, a defective appraisement, or an improper classification, yet it is respectfully submitted that to interpret existing statutes in any way impairing or defeating this right to fortify one's protest by a suit at law would be to give the statutes an effect beyond the constitutional power of Congress.

This contention is not inconsistent with any decision of this Court.

The only period in our history where it was held that an action *in assumpsit* for money had and received did not lie against the collector for money paid as duties under a mistake of fact was after the legislation of 1839 (which is retained in Sec. 3010, U. S. R. S.), imposing on collectors the duty to pay all moneys immediately on collection into the U. S. Treasury, which obligation, unless coupled with the reciprocal or reserved right still to sue the Government's officer receiving the money paid under protest, was held to eliminate all right of recovery in such an action. The Government, it was said, could not be sued as a defendant without its consent; and a collector not having a plaintiff's money in his hands, unless he unlawfully retained it, could not be held under an implied obligation of debt for that money as money in his hands belonging to another. Hence this Court, in Cary vs. Curtis, 3 How., 240, held that *assumpsit* in such a case did not lie.

Congress then *immediately* so acted as to announce that no such result was intended, and since 1845 *the right to sue* has been unquestioned.

Even in *Cary vs. Curtis* the *right to sue* was not denied. It was only *held* that the common law *elements to recover in an action of assumpsit for money had and received were wanting.* This was an accidental result of the law of 1839, regulating collectors; and this Court expressly intimates the existence of other modes of redress for the importer, as by tendering the true legal duties and demanding his goods, or by trover, detinue, etc.

The Court expressly refuses (p. 250) to respond to the enquiry, as not legitimately before it, as to "whether all right of action has been taken away from the party."

Subsequent legislation has regulated the practice in collectors' suits as to protest, appeal, and essential particulars of case, but without affecting the elements of the common law action based on defendants' receipt of plaintiff's money, paid involuntarily and under protest. In *Cary vs. Curtis*, the majority opinion does not hold that *no* common law action would lie, but disposes of the case solely on the ground that *assumpsit* did not lie. The law would not *imply* a promise to pay when the Collector was by law bound to pay the same money to another, *i. e.*, to the Treasury.

The minority (STORY, MCLEAN, J. J.,) stoutly declare that if Congress could leave the power of interpreting laws to a functionary whose judgment is final, then the Government is not what he (Story) thought it to be, namely, of the three great independent departments, Executive, Legislative and Judiciary.

MCLEAN, J., in dissenting, holds the action to be founded on the illegality of the transaction, and favors recovery even in *assumpsit.* Otherwise, in the performance of their ministerial duties, executive officers "may disregard and trample on the rights of the citizen without indemnity" (p. 266).

That Congress could or did deprive the plaintiff of any redress whatever in some form of action *Cary vs. Curtis* did *not* decide. No case in this Court has so decided.

Moreover, whatever effect may have been given to the law of 1839 before any further enactments had been made, its reënactment in 1874, concurrently with other laws of 1845, 1851, 1864 and

1874, which may have deprived the law of 1839 of any restrictive influence on the importer's right of common law action, presents for construction and interpretation a condition of legislation on this subject not hitherto under consideration by this Court.

Whether, therefore, it is within the constitutional power of Congress to prohibit a suit at law founded on the illegality of a transaction, set forth according to modern pleading in a plain and concise statement of facts constituting the cause of action, is to be treated by this Court as an original question.

The *United States Constitution* provides:

"No person * * * shall be deprived of life, liberty or *property* without due process of law."—*Art. V.*

"In suits of common law * * * the right of trial by jury shall be preserved."—*Art. VII.*

Wherever there existed a right of action recognized by the common law as it stood at the time of adopting this article, Congress is prohibited from defeating the right of trial by jury.

Wherever there exists a state of facts which, by the common law, were the prerogative of a jury, Congress shall not disturb the citizen's right to appeal to a jury.

Legislation directed in derogation of this right should at least be rigidly construed.

Is it not depriving a citizen of his property without due process of law and his right to a jury trial in such actions as were then recognized as common law actions, if to regain his merchandise from an officer's custody, he be compelled to pay such officer more money than the amount of duties lawfully chargeable on such property?

If in order to release my goods from the Sheriff I involuntarily and under protest pay him a larger sum than his warrant lawfully calls for, can the State destroy my right of action against him? The time, place and method of conducting such action may be limited; but the right to institute it cannot be impaired. The *State* Courts may take jurisdiction. If the goods were not dutiable at all and were held for duty, such retention would be an illegality for which indemnity in any court of competent jurisdiction could be claimed at law regardless of any legislation. It would be a case arising not *under* the revenue laws, but in spite of them; and unless on account of citizenship of parties, would not be cognizant originally in U. S. Courts except by special legislation.

If being dutiable the goods are held for a duty beyond what the law justifies, then there is duress and illegality to an amount to be proved; but duress and illegalities all the same, for which the common law affords indemnity. In the case at bar the N. Y. Supreme Court, where the suit was commenced, was a competent original jurisidiction to enforce this indemnity. The certiorari to U. S. Court did not change the character of the action. It was the defendant's exercise of a statutory privilege.

It is submitted that the prevailing opinion in *Cary vs. Curtis* does not contovert this view; nor did the case require it. Its disposition is placed on other grounds (*See* 3 *How., p.* 250).*

Even were it otherwise this Court is now asked to to examine and to pass upon the subject so far as it may be essential to the determination of the case at bar. If the forcible reasoning of Judges Story and McLean were not applicable to the determination of the case of Cary vs. Curtis (as was then held), the considerations then advanced by those eminent jurists, and by the prevailing opinion above cited, may prove instructive in disposing of the case at bar.

VI.

The government's contention is against public policy.

As the result of a suggestion in 16 How., 272, it has been urged that, to subject appraisements to judicial review might

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*"The legitimate inquiry before this Court is not whether all right of action has been taken away from the party, and the Court responds to no such inquiry.

"The question presented for decision, and the only question decided is, whether under the notice given by the Statute of 1839, payments made in despite of that notice, though with protest against their supposed illegality, can constitute a ground for that implied obligation to refund, and for that promise inferred by the law from such obligation, which are inseparable from and indeed are the only foundation of a right of recovery in this particular form of action.

"And here is presented the answer to the assertion that by the Act of '39, or by the construction given to it by this Court, the party is debarred all access to the courts of justice, and left entirely at the mercy of an executive officers. *Neither have Congress nor this Court furnished the slightest ground for this assertion.*"

" involve the collection of the revenue in inextricable confusion and embarrassment." If so, then Congress might intervene again. But this would not be the result in the judgment of experienced and sagacious observers. While, it is submitted, such considerations do not come within the judicial range of public policy, it should be noted that the condition of the statute (since 1874) leaves no practical method of testing market value of dutiable merchandise except by the importer's protest and action against the Collector.

Formerly, when an important controversy as to value arose between the importers and the Government, proceedings of condemnation for undervaluation were instituted, and the true market value speedily arrived at by a jury. The opportunity was useful to merchants and to the revenue, and the practice one of public advantage.

Under existing law this custom is no longer practicable, because by the Moiety Act of 1874 (Ch. 193, Sec. 16), in all forfeiture proceedings, a special finding by the jury is required as to whether the acts alleged " were done with an actual intention to defraud the United States." This was a radical change in the law, which had been that in such suits the Government had only to establish *prima facie* cause for seizure, after which the burden of proving the virtue of the transaction was upon the claimant (*1 U. S. Stat. at L., 678, Sec. 71; U. S. R. S., § 909*).

Under this old law, when the Government suspected persistent undervaluation, goods were seized, and their value promptly subjected, if claimant desired, to judicial scrutiny. The plaintiff in error could not induce the Government to proceed in this way in the controversy represented by the case at bar.

Trials affecting market value of imported merchandise were frequent prior to 1874, as shown by the numerous reported cases. Such trials and their possibilities exerted a wholesome restraint both upon merchants and revenue officials.

Since 1874, because of the extreme cases only in which the Government can recover verdicts, proceedings to forfeit have been rare; and the salutary check of jury trials to pass upon disputed market values has totally disappeared.

Fortunately there remains the right to obtain the vindication of a jury by paying, as in this case, the excessive duties under protest, and assuming all the burden, as a plaintiff must, of es-

tablishing the appraised values as unmeritorious and beyond those authorized by law.

Suppose that in disregard of the common knowledge of commerce, of the estimates of everybody, of the depositions of every witness, of the laws and Treasury orders directing the methods of estimating and of ascertaining the items going to make up dutiable values, some careless, or wilful, or malicious official had deliberately affixed a value of 152 francs instead of 52 francs per dozen upon gloves in question claimed to be valued at between 38 and 42 f.? This would be practical confiscation. Is it possible that the plaintiffs would be without remedy? No. It is precisely for such classes of cases that the right to proceed with actions of this character has been expressly recognized.

Besides, a *penalty* has been exacted on the pretence that plaintiff's oath on entry was false. Shall he not have his day in Court on such allegation before his condemnation, and the wresting from him of his property or money paid to regain it?

To maintain that no action in law will lie against a collector to receive back an excess of duties paid him under protest, even though the Collector had covered such duties into the Treasury, "would be carrying an exemption of a public officer beyond any protection sanctioned by any principles of law or sound public policy."

Elliott vs. Swartwout, 10 Pet., 156.
Bend vs. Hoyt, 13 Pet., 277.

VII.

Every "decision" of Collector examinable.

The Collector is not an appraiser. Every "decision" of the Collector after protest is open to assault in the Courts upon the merits.

When protest is thus followed by suit the acts of the department officials are not conclusive. It may be shown that the goods were held by them for more duty than the law justified. "When an appeal is taken from his decision, the decision of the Collector ceases to be conclusive." *Unkart vs. Arthur, 6 Otto, 121–123.*

Moreover, it is the Collector's decision as to "*amount*" as well as (Sec. 2931) to "*rate*" that is expressly liable to question.

There is no provision of law whereby the Collector shall fix an *amount* of duties other than by computing the legal *rate* upon the foreign or lawful dutiable *values*. The "amount" therefore refers to and includes such values.

The Collector, in order to arrive at a proper "amount" may in his discretion order appraisement after appraisement, until finally he shall be satisfied. *But there is no provision of law under which the Collector himself may appraise.*

The Collector must, therefore, adopt the lawful appraisement of another official. In this case he has not done so.

The lawful appraisement called for by plaintiffs under their appeal (rec. fol. 392), was terminated by the reports signed Sept. 19, 1878. (Ex. C, rec. fol. 39, and Ex. L, rec. fol. 216). No further appraisement was ordered by the Collector, or was conducted (rec. fol. 387–394–397–398).

The Collector adopted neither of those appraisements.

He had no right to a new one by the general appraiser alone. The last-named officer appraises only on appeal by the importer, and always in association with a merchant appraiser designated by the Collector and not by the helpless importers.

The Collector had the statutory right to order an appraisement, *de novo*, by the appraiser of the port (see Secs. 2906, 2929–2928, U. S. R. S.). He did not so order. With such a new appraisement, it may be that plaintiffs would have been satisfied without appeal to the general and merchant appraiser.

It may be said that as the result of the Collector's adoption of the figures of the so-called amended report of the general appraiser of Oct. 10 is more favorable to the importer than that officer's earlier figures, the plaintiff is not prejudiced.

But the answer is, it was an *irregularity* at least; and being such, it vitiates the appraisement and in any view submits the values at once to the jury. Besides, had the Collector no choice except between excessively high and the true value, he would be presumed to select the true one. He selected neither.

The Court below fatally erred in upholding the legality and regularity of this proceeding, and in giving conclusive force and immunity to the Collector's decision based thereon.

The importer's several protests afforded the Collector abundant opportunity "before it should be too late to remove". (Davies vs.

Arthur, 6 Otto, 151) the objections to the assessment of the duty in the method he adopted; but the Collector paid no heed to them, and the Secretary sustained his action, which if unlawful should bring the plaintiff a new trial.

VIII.

The contentions of the plaintiff in error, touching the subjection under existing law of all assessments of duty, including valuations of imported merchandise, to judicial scrutiny when duties are exacted under protest, is consistent with the

HISTORY OF LEGISLATION AND THE JUDICIAL DECISIONS UNDER THE SEVERAL ACTS OF CONGRESS PRIOR TO THE REVISED STATUTES CONCERNING THE EFFECT OF REAPPRAISEMENTS.

Act 1799, Ch. 22 (1 Stat. at L., 665) Sec 52, is the first act on the subject, and provides that all good wares and merchandise of which entry shall have been made incomplete, or without the specification of particulars, either for want of original invoice or invoices, or for any other cause, or which shall have received damage during the voyage, to be ascertained by the proper officers of the port, shall be conveyed to some warehouse or storehouse to be designated by the Collector, &c. (in same parcels, and at the risk and expense of the importer, and under a proper officer), *until the particulars, cost or value, as the case may require, shall have been ascertained, either by exhibition of the original invoice or by appraisement, at the option of the owner, in the manner hereinafter provided, and until duty is paid or secured.**

[And for the appraisement of goods not accompanied with invoice, or to appraise the damage, the Collector is to appoint one merchant, on the request of the importer, and the latter is to appoint another, who shall appraise the value of the said goods] (the foregoing words in brackets are not in the revision, being obsolete and superseded). And in respect to damaged goods, they shall likewise appraise the damage (this is preserved in section 2927). At this time there was only one form of entry and (section 61) *ad valorem* rates were estimated by adding 20 per cent.

*The portion italicized is preserved in section 2926, Rev. Stat.

or 10 per cent. to the actual cost thereof, according to the place of exportation.

The next act upon the subject is the Act of March 1st, 1823 (Chap. 21, 3 Stat. at L., p. 730, &c.)

Section 16 provides that two appraisers should be appointed in each of certain ports, and in other ports two respectable merchants should be appointed by the Collector to act in that capacity.

Section 18 provides that where the importer was dissatisfied with the appraisement under section 16 he should employ, at his own expense, two respectable resident merchants, who, being similarly sworn and qualified, shall, together with the two appraisers appointed on the part of the United States under this act, examine and inspect the goods, and report the value, if they agree, and if not, the circumstances of their disagreement, to the Collector; and in case the importer should be dissatisfied with such report and second appraisement, it shall be left for him to refer the case to the Secretary of the Treasury, who was authorized and empowered to decide thereon, and to require further testimony in the case in such manner as he may deem proper, and order the goods to be entered accordingly.

There was nothing in this statute about the result in such cases being final and conclusive, but it was provided (Sec. 23) that evidence should not be admitted in any court of the United States on the part of the importer "except in corroboration" of the importer's entry. Section 18 of this act is not found in the revision, but section 16 remains in various places, notably at section 2609, where two merchants are substituted for the appraiser when there is no appraiser at a port. Also in sections 2614 and 2947, and 2945 and 2610.

The next important act is the Act of 1830, May 28th, chapter 147, Stat. at L., p. 409.

Section 2 provides that an assistant appraiser shall be appointed, whose appraisement the principal appraiser is to revise and report upon to the Collector; and the lattter, if he deem any appraisement too low, had the power to order a reappraisement, either by the principal appraisers, or by "three merchant appraisers," designated by him for that purpose, and to cause the duties to be charged accordingly.

Section 3 provides an appeal thereafter by the importer on swearing that the appraisement was too high, and giving his reasons—*i. e.*, higher than the actual cost and charges, and also than the current value at the place of exportation, in which case the Collector should designate one merchant and the importer another (and who, if they disagree may designate an umpire), and when they or a majority of them shall have agreed, shall report to the Collector, *and* if their appraisement shall not agree with the United States appraiser, the Collector shall decide between them. There is nothing in this act about such decision

being final. This act is obsolete. It is not in the revision, except section 8, which is found in section 2,925 in respect to certain bonds.

The next Act is 1832, July 14, chapter 227 (5 Stat. at L., p. 593).

Section 15 provides that after March 3, 1833, the dutiable value of goods were to be estimated as follows: According to the actual cost, if same were purchased, or the actual value, if same shall have been procured otherwise than by purchase, * * * or to the appraised value, to which shall be added charges. It is at this point in the legislative history of this subject that the following cases should be examined, viz.: The cases of

Elliott vs. Swartout, 10 Peters, 158 (importation in 1832).

Swartout vs. Gihon, 3 Howard, 110 (importation in 1836).

Bend vs. Hoyt, 13 Peters, 267, 277 (importation in 1837).

Rankin vs. Hoyt, 4 Howard, 327 (importation in 1838).

The case of *Elliott vs. Swartout* (10 Peters, 158) was that of an importation after 1832, which was assessed under the foregoing Act of July 14, 1832, and the case decided that an action in *assumpsit* will lie on the payment under protest, to get possession of goods, on the broad grounds of the common law. The law established by this case having been apparently interfered with by subsequent legislation, was reëstablished and confirmed by the Act of Congress passed 1845, and revived by section 3011, U. S. Rev. Stat., and even a verbal protest was in 1845 held sufficient in *Swartout vs. Gihon, 3 Howard, 110.*

The case of *Bend vs. Hoyt* (13 Peters, 263) was an importation, in 1837, of certain gloves, which were charged 25 per centum *ad valorem*, and a bond was given accordingly. Afterwards it turned out that the case was of silk hose, not of cotton, and the plaintiff claimed the deduction accordingly. The Treasury Department had refused to correct certain errors in fact, and held the importer to the bond. In 1838, the plaintiff protested against the payment of bond for duties. The particular package in question the Collector never had, nor was it examined by the appraisers. The questions certified were two. First, whether a personal action would lie against the Collector for the excess of duties on this one package, if its contents were such as claimed; and, second, what was the proper duty on this package. The first question was answered in the affirmative, and it was held that duties paid under protest, if illegal, *or paid under any mistake of fact*, might be recovered back (page 267), but in this case it was held that the action was not maintainable because of the peculiar fact. The mistake, if any, was one of the plaintiff's own culpable negligence to redress the supposed mischief for

which courts do not sit. Even the dissenting opinion in this case concedes the proposition that payment under a mistake of fact can be recovered back. It dissents only because such a mistake was not in this case believed to have been shown. This case, like the case of Elliott vs. Swartout, affirms the board doctrine of the right to a common law action.

The case of *Rankin vs. Hoyt*, 4 How., 327 (decided in 1846), was upon an importation in 1838, of wool claimed to be free, because of such value per pound as caused it to be free, but the appraisers had put it higher and the Collector had taken duty accordingly. In this case, the jury found the value of the invoice to be correct. There was a special verdict finding the following facts, among others: Three importations of April, May and November, 1838, the invoice value in each was of wool 7½ cents per pound unmanufactured. The three invoices were examined on entry and appraised, each and every parcel thereof, at nine cents per pound, which appraisement was reported to the Collector *and no appeal taken therefrom by the importers.* All the wool was unmixed and of the same quality. The Collector insisted that the wool was subject to duty according to the valuation of the appraiser, and refused to deliver the wool except on payment of duties accordingly; but the plaintiffs insisted that the wool was free, and protested under section 2, Act of July 14th, 1832, which said that unmanufactured wool under eight cents per pound was free, and fine wool mixed with dust, and thus reduced in value to eight cents a pound or under, should be appraised at such price as in the appraiser's opinion it would have cost if it had not been so mixed, and a duty thereon shall be charged in conformity with such appraisal; and wool unmanufactured, over eight cents in value per pound, shall pay four cents per pound and forty per cent. *ad valorem.* The special verdict also found that duty had been paid as though the wool was nine cents per pound in value as it was appraised, but that its value at the place of exportation was seven and a half cents per pound (as stated in the invoice), *and no more.*

It was upon these facts that the Court ordered judgment for Hoyt, the defendant, and plaintiff appealed by writ of error to the Supreme Court.

As acts applicable, the record states, section 7, Act of July 14th, 1832, which says that in all importations subject to *ad valorem* duties, a collector shall cause the actual value "to be appraised, estimated and ascertained"; and the appraisers then shall "by all reasonable ways or means in his or their power, ascertain, estimate and appraise the true and actual value in the invoice, any invoice or affidavit thereto to the contrary notwithstanding," of the goods, &c., or quantities of them, as the case may require; and all such goods being wool, or partly so, in an unfinished condition, shall, in every such appeal, be deemed of as great value as if finished, &c.

Section 8 is cited, which gives power to summon the importers and their papers, and there is also cited section 3, Act of May 28th, 1830, as to an appeal to the merchant appraiser. The Court, at page 335, say, in responding to the argument that the jury found the invoice value to be correct, and the Collector therefore is not justified in following the higher valuation of the appraisers: "but an appraisal made in a proper case must be followed, or the action of the appraisers would be nugatory, and their appraisement and expense become unnecessary. The propriety of following it cannot in such a case be impaired by a subsequent verdict of the jury differing from it in amount, as the verdict did not exist to guide the Collector when the duty was levied, but the appraisal did and must justify him, or not only the whole system of appraisement would become worthless, but a door opened to a new and numerous class of actions against collectors entirely destitute of equity—we say destitute of it, because in case the importer is dissatisfied with the valuation made by the appraisers, he is allowed by Act of Congress (4th Statutes, 409) of 1830, before paying duty an appeal and further hearing before another tribunal *constituted in part by persons of his own selection.*" These persons were in fact legislative referees, to which, if the importer did not resort, he could not complain. *Under the statutes then existing the importers had a mercantile tribunal, constituted by their own nomination, to which they could resort.* There is no such tribunal under the present statutes, nor has the merchant any voice in selecting even the merchant appraiser. The foregoing reasons, based upon propriety and expediency, do not seem to have been essential to the final determination of the case, as it was determined. These reasons, however, concern a very different state of the law than that exhibited by subsequent statutes.

The case of *Tappan vs. the United States*, 2 Mason, 393, (Mass., 1822; Story and Davis, JJ.), being frequently cited in aid of the Government's contention, should also be noticed. That was an action in the United States District Court of debt on bond for duties; a plea of tender, replication of larger sum due, and on this point issue joined and verdict for the United States. Writ of error to the Circuit Court. The bond was given for a third of the duties estimated on the invoice values. Appraisers reported the invoice too low, and on their opinion the Collector issued a warrant of appraisement to the said appraisers, and Foster named as appraiser by the importer. Foster appraised at the invoice price, but the Government appraisers appraised part at ten per cent. over the invoice price, part at twenty-five per cent. over, which carried an additional duty (at the rate of fifty per cent.), besides more at the regular rate, so that considerable more duty was claimed. The Government appraisers declined to state any facts coming to their knowledge

inducing them to fix the value above the invoice, and importers then offered to prove that the invoice value was the actual cost and fair and usual market price and true value at the place of exportation; but such evidence was excluded and direction given on the testimony as above for a verdict for the United States.

The appraisement in this case was under the Act of 1818, chapter 74, which act the Court discusses at length, and its relation to prior acts, as to whether it is *cost* or *value* that is to be assumed, was meant in one or all or any of the sections of that and prior acts under consideration, and concludes, however, that the Act of 1818 did not change the basis of valuation; and it was the duty of the importer to make out his invoice at "actual cost," on which duty should be collected and computed in cases of *bona fide* invoices (under section 4 of Act 1818).

But where such invoices are not produced, or are tainted with suspicion of fraud, or goods are damaged, the Collector is at liberty to direct an appraisement, which was to ascertain the actual cost, by showing it through the true value. An appraisement was rightfully made, only when the Collector, *on his own judgment*, suspected a fraudulent invoice; but being then made it was conclusive. The power to order such appraisements being thus guarded and "fenced around to prevent abuses," is given as one of the reasons why the party has no other remedy, for when "the Legislature has specified a particular mode of estimating duties in any case, that excludes any other mode of estimating them."*

The appraisement, under the Act of 1818, was then held conclusive, and the Collector was presumed to have had proper ground to order an appraisement, as nothing to the contrary appeared on record, and the appraisers were held to have acted impartially, because the *contrary was not shown*, nor the appraisement shown fraudulent, when, of course, it is not conclusive and the practice of appraisers examining goods before being called upon officially to do so was condemned.

That case, it will be perceived, was not against the Collector to recover excess, but an action on a bond for duties regularly liquidated and assessed. It was an action similar to *Westray vs. U. S.*, decided by this Court in 18 Wall., 329. That an assessment regular and honest on its face can be controverted by a defendant, because not meritorious, in a suit on bond brought by the Government, has never successfully been contended. But an assessment

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* [Here it may well be interposed that, on the contrary, when the Legislature says that duties may be tested in court, in an action in the nature of an action at law, as is expressly provided by sections 3011 and 2931, 2932, there must be found some provision expressly excluding a particular class of cases, or all cases are subject to such test.]

alleged to be excessive, and submitted to under compulsion and resulting in payment under a common law or statutory protest, is amenable to the inquiry (1) whether the the assessing officers acted within the provisions of law, and (2) whether their results were justified by the facts, as such facts should by the law be treated.

The assessing officers were not umpires, arbitrators, or *de facto* judges, clothed by law with exclusive and final determination of the facts on which the amount of duty depended absolutely. They merely certified their judgment to the Collector, whose duty to the Government was discharged by estimating the tax accordingly. But on receiving protest, or, on his own motion, the Collector had discretion to inquire into the appraisement to see if officers acted properly and lawfully, or to order a new appraisement.

It is not the case of exclusive discretion, without provision for appeal or review, reposing in an appraiser, to the final defeat of the meritorious duty, as the law and facts may judicially establish it.

Besides, the statutes now expressly grant the right to inquire into the merits of all assessments.

It will be seen that up to this point in the history of the country there was no legislation expressly restricting an importer from bringing a suit to test the merits of an appraisement that he himself shall ask for, nor is there up to this point any reported case denying the right of the importer to subject the merits of a compulsory appraisement to a judicial test. When actions against collectors were temporarily interfered with by the statutory provision appendant to an appropriation bill in 1839, Congress was quick to restore the right to sue in *assumpsit* which this Court reluctantly held was taken away; and the right to test any question involving the payment of an alleged excessive duty upon any ground whatever has never been denied, except during the existence of statutes, which will be presently referred to, restricting such right, and which statutes have disappeared from the statute book.

Up to this point, the scheme of the statutes in respect to appraisements, and the purpose of appraisements, is quite different from the purpose and scheme indicated by subsequent statutes. Indeed, except for the purpose of indicating the very limited value to be given to the Rankin and Cary cases in the Supreme Court above cited, and relied upon as authority against the plaintiffs in this case, a review of the statutes prior to 1842 is of little consequence.

The foregoing, however, may be deemed to comprehend the history of the law up to the enactment of the Act of August 30th, 1842, chapter 270, 5 Stat. at L., p. 563. This act provided for the appraisement of merchandise, and (by section 17) in case

of the dissatisfaction of the importer for a further appraisement by two discreet and experienced merchants whom the Collector should select. Section 24 is found at section 2652 of the Rev. Stat. Collectors and other officers of the customs are to execute and to carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws, and his decision is to be conclusive and binding upon all collectors and officers of the customs. Section 2652 provides that the Secretary's orders are conclusive upon all officers of the customs, but section 2931 provides that such officers may be sued for alleged excessive fees and EXACTIONS OF WHATEVER CHARACTER, even if taken under the direction of the Secretary of the Treasury. Now, if there be that conclusive finality contended for against the plaintiffs in this action, precluding further inquiry in this case, as the result of section 2930, Rev. Stat., why does it not exist so as to protect the Collector against a verdict in *any* suit under sections 2931, 2932 and 3011. It is obvious that it does not.

If, now, section 2930 is too final to admit of further inquiry, notwithstanding concurrent sections permitting it (sections 2932 and 3011), then section 2652 is also too final to admit further inquiry judicially, although the contrary is conceded by very different practice since 1845.

The Act of 1842, chapter 270, repealed all former laws inconsistent with it and became the basis of the statutes respecting appraisement. The right of appeal, as found in section 2930, to merchant and general appraiser, was given by this statute of 1842, and at the time when, according to the decisions of the Courts, a right of action in *assumpsit* against the Collector did not exist. The right of action taken away by the Act of 1839 * * * (5 Stat. at L., 348, sec. 2) was restored by the Act of 1845 (5 Stat., p. 727). It may well be said, that this right of appeal to merchant and general appraisers was designed as a partial substitute for the right of action already taken away from importers by Congress.

This Act of 1842 was modified by the Act of July 30th, 1846, chapter 74 (9 Stat. at L., p. 43), where it was provided by section 8 that the importer might add to his invoices and entries to make the market value, and it was made the Collector's duty to cause the dutiable value to be "appraised, estimated and ascertained in accordance with the provisions of existing laws," and if it exceeded ten per cent. of the entered value to add twenty per cent. duty; but in no event was the duty to be taken on less than the invoice value. Indeed, the only cases reported arising under the statutes cited, up to this point, are:

First. Bartlett vs. Kane (16 How., 269), where the importation was in 1849, at Baltimore; but the facts were that an appeal from the appraiser to the merchant appraiser *was withdrawn*, and then payment of duty and penal duty followed, the appraiser

having raised the invoice, and suit was brought to test the actual market value. This case, of course, followed *Raukin vs. Hoyt*, as it was clear the merchant had not pressed the remedy by appeal for a reappraisement that the statute had prescribed.

Second. The case of Greeley, administrator, &c., against Burgess (18 How., 413), where the importation was made in 1850 and where the protest was that the goods were given "a fair valuation in the invoice," and that the appraisers "did not fairly and faithfully examine them." They had been examined by merchant appraisers presumably after an appeal therefor, and evidence was received on the trial, and held properly so received, that the appraisers did not examine the sugars, and that they saw only samples of one in ten packages which had deteriorated by exposure and were not fair samples. The jury heard such evidence, although no fraud of the appraisers was alleged or proven, and gave a verdict for the plaintiff which was sustained in the United States Supreme Court. By reason of the appraisement a penal duty had been exacted and was recovered back as sought to be recovered back in the case at bar. The appraisers' returns were *not* received by the Court as conclusive.

We come to a very different condition of the statutes, however, in 1851 (Act of March 3d, 1851, chap. 38, 9 Stat. at L., page 629). By this time, it was deemed wise to appoint regular officers to act as appraisers in the principal ports of the country, instead of calling upon merchants as continuously as contemplated by prior statutes. The appraisers' department was much enlarged. It was made the duty of the Collector to cause the market value or wholesale price to be appraised, estimated and ascertained in all cases, and differences respecting the virtue and extent of his first requisite appraisement and the effect of a reappraisement applied for by the dissatisfied importer were set at rest by the repeal of all prior acts' and the affirmative provision, section 3, that four appraisers should be appointed to afford such aid and assistance in the appraisement of merchandise as may be deemed necessary by the Secretary of the Treasury to protect and insure uniformity in the collection of the revenue; and, wherever practicable, in cases of appeal from the decisions of appraisers, under section 17 of the Act of August 30th, 1842, *the Collector* shall select one discreet and experienced merchant, who, together with one of the appraisers to be appointed under this act, shall appraise the goods; and if they shall disagree, the Collector shall decide between them, and the "appraisement thus determined shall be final, and deemed and taken to be the true value of the goods, and the duties shall be levied thereon accordingly, *any act of Congress to the contrary notwithstanding.*"

This act took effect April 1st, 1851, and repealed all inconsistent acts and parts thereof. In this condition of the statutes arose

the case of Belcher vs. Lynn (24 How., 517), which was on an importation in 1853, and which was a case of complicated facts (where a formal agreement was entered into between importers and government for an appraisement), not necessary to be further examined here, except to say that the appraisement was held by the Court, at page 522, to be the act of an officer acting within his proper discretion, not subject to further review, "*unless an appeal or other revision is provided for by some appellate or supervising tribunal prescribed by law.*"

In 1851, when the statute was passed under which the case of Belcher vs. Lynn arose, there ceased to exist, by virtue of sections 3 and 4 of the Statute of 1851, any appeal from or other revision of by some appellate or supervisory tribunal, the action of appraisers legally conducting an appraisement under section 3 of that statute. So the case of *Iasigi vs. the Collector* (1 Wall., 378) followed the case of *Belcher vs. Lynn*, and upon the same grounds. This case was upon an importation in 1860, and it appears that all but the examination packages were delivered to the merchants *after* the invoice had been passed by the appraisers and marked "right," and sent to the Collector. Two weeks afterwards a reappraisement was ordered by the Collector, not on the appeal of the merchant, and on the reappraisement the value was raised and a protest was filed, the importers having refused to redeliver the wool to the Collector, but paid the extra duties, $16,571, demanded, and protested, claiming simply that it was not the true and proper market value. The Court say (at page 384) that it cannot go behind the appraisement, and that the true remedy was *by an appeal to the merchant appraisers.* The importer had omitted his proper remedy.

Now this, it is obvious, was not a case of protest before payment to get the goods under the Act of 1845. It was a case under the Statute of 1851, which prescribed the importer's remedy to be, in case of dissatisfaction, to appeal to the merchant appraiser to be appointed by the Collector, and to the general appraiser. Certainly this he should do, before he could invoke the courts. This case, indeed, is no useful authority to throw light on the present inquiry.

The present inquiry involves an interpretation of statutes essentially different from the restrictive features of the Act of 1851; statutes which have been passed since that act became a law, and which not only modify it, but mollify it, convey rights expressly excluded by the Act of 1851, and repeal also those phrases of the Statute of 1851 which give proceedings under that statute the high character of a conclusive determination.

The statutes in force in 1851, as illustrated by the decisions under them, cannot, therefore, correctly control a question arising under a different state of the law resulting from the enactments about to be cited, passed 1864,

1874 and 1877. Right here, it will be observed, that so much of the Statute of 1851 (section 3), which says that the appraisement on a reappraisement shall be final and conclusive, "any act of Congress to the contrary notwithstanding," is not found at section 2930 of the Revised Statutes, where the substance of the Act of 1851 respecting reappraisements was obviously intended to be placed. Nor is there enacted concurrently with section 2930, as there was in the Act of 1851, a provision that all prior or inconsistent acts were repealed. On the contrary, prior and inconsistent acts which did not exist in 1874, and which were largely left without force by the Act of 1851, were in 1874 revived and enacted concurrently with section 2930.

Proceeding with the history of legislation on the subject in question, and omitting for the present the consideration of the Act of March 3, 1857, section 5 (11 stat. at L., p. 195), giving a right to protest and appeal and bring suit in general (which Act does not appear in the Rev. Stat.), the next important act in the order of time is the Statute of June 30th, 1864, chapter 171 (13 Stat. at L., p. 214, sections 14 and 15).

By this act all decisions of the Collector in respect to the ascertainment and liquidation of duties and the exaction of fees, were deemed to be final and conclusive, unless protest and appeal should be made and suit brought within prescribed time, in which event, of course, the Collector's decision was not to be final and conclusive, otherwise the right to bring suit would be a nugatory one. Now, whatever conclusive finality attached to the decision of the Secretary or any of his subordinates, or of the Collector, prior to 1864, was at an end by this statute. Any act of the Collector resulting in an alleged excessive demand, if protested against, might be judicially examined, whether that act was founded upon the absolute direction of the Secretary of the Treasury, or upon the official decision of any other official. Whatever exalted character or freedom from further examination attached to the decision of the appraiser or the general appraiser associated with the merchant appraiser, as certified to the Collector, was removed by the Act of 1864, in all cases where the importer protested. Leaving the revision entirely out of consideration, this is the direct, natural and exclusive interpretation of the Act of 1864. This is also the interpretation given it by the Supreme Court in *Arthur vs. Unkart, 6 Otto, 121.*

No reported cases have arisen since the Act of 1864, holding any other view. Indeed, it is believed that no case attacking the finality and conclusiveness of the Collector's decision, based upon a regular appraisement and reappraisement, has been presented. There are many reported cases arising under various statutes where an appraisement or reappraisement was examined upon a claim of some impropriety or illegality. The courts have uniformly entertained and examined cases involving alle-

gations of that character. In the condition of the statutes, as they existed after June 30th, 1864, it is insisted that where, upon a reappraisement, a result that is not fair and meritorious is arrived at, and an excessive duty, even to a penal duty, consequently imposed, the right of the importer to test the merits of the exaction has never been denied.

In the expressions from the Bench in the course of the trial of case at bar, it was conceded that the language of the Act of 1864 (Sec. 2931) was broad enough to admit inquiry into the merits of excessive appraisements, resulting in duties paid under protest. But it was suggested, that as the Act of 1851 was partially revived in section 2930, that the conclusive character and immunity from scrutiny of appraisements was restored. The suggestion goes too far, for even were it restored, in original language (which it is not), the concurrent legislation of other sections remains. So is the Act of 1839 restored, and will be found at section 3010; and this act the U. S. Supreme Court, in Cary vs. Curtis, have declared impaired the right of action in assumpsit. Yet the right is daily exercised under the regulation of other sections already herein cited; and section 2930 is as harmless as section 3010, in affecting the right of trial by jury secured by sections 3011, 2931, 2932, and by the common law.

Proceeding with the history of the legislation on the subject in question, we come next to the Revised Statutes passed June 22d, 1874. Here we have all prior acts absolutely repealed except as we find them in express language in the revision. Section 2930 directs as follows: "If the importer, owner, agent or consignee, of any merchandise shall be dissatisfied with the appraisement, and shall have complied with the foregoing requisitions, he may forthwith give notice to the Collector, in writing, of such dissatisfaction; on the receipt of which the Collector shall select one discreet and experienced merchant to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants, citizens of the United States, familiar with the character and value of the goods in question, to examine and appraise the same, agreeably to the foregoing provisions, and if they shall disagree, the Collector shall decide between them; and the appraisement thus determined shall be final and be deemed to be the true value, and the duties shall be levied thereon accordingly."

The last phrase of this section is taken from section 3 of the Act of 1851, but omits the provision by which the reappraisement was to be the end of all the importer's privileges or rights, "any act of Congress to the contrary notwithstanding." Indeed,

section 2930 simply directs that duties shall be levied in accordance with the appraisement determined, and so duties are to be levied by section 2931, according to the ascertainment and liquidation of the Collector in *all cases*, which shall be final and conclusive against all persons interested therein, unless there shall be a protest, appeal, suit, &c. There is the same high character of conclusiveness to the decisions of the Collector in one section as there is to the determination of the appraiser in section 2930, and there exists the same right of review in the courts against both decisions. Whether this be so or not, when the merchant appraiser and general appraiser disagree, and the Collector decides between them, section 2931 expressly provides that all decisions of the Collector shall be subject to the right of judicial review.

But the Revised Statutes, by section 3011, add a new weapon to the importer's equipments. The Act of February 26th, 1845, which the Supreme Court held to be repealed after 1864, was, inadvertently or otherwise, inserted in the revision at section 3011, and whatever doubt exists, if any can be conceived or argued from other sections, respecting the right of the importer to subject the decisions of custom officers of any and every degree to the test of judicial examination, is entirely removed by section 3011. This section was unnecessary, after the enactment of June 30th, 1864, to restore the importer's right to test any incident to the liquidation of duties. He had that right after June 30th, 1864, because of its operation by implication on all prior statutes, including the Acts of 1851 and 1845. He had that right by sections 2931 and 2932. Lest it might be restricted by some artificial construction, for greater assurance, a separate section expressly confides it in every case where the final result can be established in a court that an excessive duty has been exacted under protest. This must have been exactly what Congress intended; otherwise, when the attention of Congress was called to the particular language and comprehensive character of section 3011, it would have been repealed. On the contrary, it was made more clear and certain by the act passed February 27th, 1877, chapter 69 (19 Stat. at Large, page 247), providing that all protests should be followed by an appeal, and that all such suits as might be brought under section 3011 should be subjected to the restriction in point of time, protest and appeal to the provisions of section 2931.

A question analogous in a single respect to one presented in

the case at bar, was passed upon in *Ketchum vs. Pacific R. R., 101 U. S. Sup. Ct. R. 239*, where this Court was called to decide as to the effect of general language in statutes upon the right of appeal as against a previously recognized general rule of law: *i. e.*—that appeals from consent decrees were not permitted. The question there was as to the right to appeal to this Court from a *consent decree*,—the statute declaring such right as to "all final decrees" of the Circuit Court. This Court sustained the right of appeal.

THE IMPORTERS RIGHTS OF ACTION IN ALL CASES COULD NOT HAVE BEEN MORE CAREFULLY PRESERVED THAN THEY HAVE BEEN BY THE LANGUAGE USED IN THE REVISED STATUTES.

IX.

The penal duty a matter of judicial investigation.

The Government has hitherto successfully urged in this case that the *penalty* (8769.40) imposed on plaintiffs in error by the Collector is not subject to judicial scrutiny, but is conclusive.

There is no provision of law declaring that when penal duties are exacted they shall not be enquired into by any Court whatever, any Act of Congress to the contrary notwithstanding. Yet it would require some such express language to work a derogation of the common law right of the citizen to have his day in Court before being lawfully subjected to the debasement and forfeiture a penalty implies.

"EXACTIONS OF WHATEVER CHARACTER" may be the subject of a suit (Sec. 2932).

It is *held* in *Bartlett vs. Kane, 16 How., 274*, that penal duties are *penalties*, not merely *duties*, but *forfeitures* distributable among those entitled to moieties.

It should require no argument to demonstrate that if penalties be collected involuntarily otherwise than by suit, the right to *test* judicially the infliction of such penalties is not to be lightly divested. The penalty depends on the importer's oath on entry being false. Shall not his verity be adjudicated?

Suppose under Sec. 2923 the revenue officer should certify that an importer had refused to depose or to answer "any interrogatories," while in truth he had not so refused, or that such refusal was justifiable, and that the $100 penalty in that section prescribed had been exacted; and on the false allegation by the Collector charging such refusal, the penalty and excessive duty had been imposed, and claimed to be "final and conclusive" within the language of that section. Would not such exactions, if involuntarily paid under protest, be subject to examination in the courts?

Suppose that in appraising kid gloves, there had been a "discrimination in determining" the foreign market value because of some trade-mark protection contrary to the provisions of *Sec. 2913, U. S. R. S.* Shall such illegal appraisement be conclusive, and not be subject to judicial scrutiny? If so, the law in this respect was incapable of being enforced in favor of the importer. Yet such is the result, if the rulings below excluding evidence be correct.

The scheme and provisions of the customs laws are irreconcileable with the pretended statutory bar to the judicial review of unmeritorious or irregular appraisements.

Nor could any penal duty under the statutes be assessed until after an "appraisement" at a figure in advance of the invoice. No such "appraisement" in this case has been had.

X.

Errors in excluding from evidence the Custom House records and protests concerning the importation in question.

In any point of view THE RIGHT of an importer protesting against a duty payment, TO SPREAD BEFORE THE COURT in support of his protests the invoice and entry of the importation in controversy, together with ALL THE OFFICIAL ACTS OF RECORD *performed by the Collector and the customs officers* in making the assessment liquidation and exaction complained of *has never hitherto been denied.*

The ERRORS of the Circuit Court in NOT PERMITTING plaintiff to introduce IN EVIDENCE the OFFICIAL RECORD of these acts (see 3 to 17th assignments of error) or any part thereof *should be held fatal.*

1. Such record is the best evidence of the proceedings, which if shown thereby to be unlawful and to have been conducted in violation of statutes, or of Treasury regulations having the force of a statute, would tend to sustain the allegations of the complaint.

The propriety of receiving such evidence is quite independent of the legal effect that may be claimed for or against such evidence when admitted. It is not privileged, but is as much an essential part of the *res gestæ* as the oath on entry, the original appraisement, the appeal therefrom, or any other document in the claim of the prescribed proceedings for the "ascertainment and liquidation" of duty.

2. Moreover, *Sec. 2922 U. S. Rev. St.*, expressly provides that the appraisers or Collector have the right to examine witnesses "touching any matter or thing which they may deem material in ascertaining the true market value or wholesale price of any merchandise imported, and require the production," &c., of letters and papers relating to the same. "*All testimony in writing, or depositions, taken by virtue of this section, shall be filed in the Collector's office and preserved for future use or reference*, to be transmitted to the Secretary of the Treasury when he shall require the same."

Of what use to *appeal* to the Secretary from a Collector's decision, if, as was erroneously held by the department (see p. 64) in this case, the Secretary could not review these depositions or "the proceedings," and the Court shall not peruse them? When so filed they are part of the invoice, entry and official "ascertainment" thereon of the tax imposed thereby. They are primary evidence of official proceedings, and must be received as the basis of any investigation into the regularity and lawfulness of the assessment complained of.

3. If, as in this case, these records show, as they do (see 8th assignment of error), as a part of such files that plaintiff in error made a written protest, protesting specifically that the proceedings were conducted in defiance of department instructions, viz., a letter of the Secretary of April 30th, 1877 (*Rec., page 135*), and regulations (cited at Rec., pp. 135–137), and that this *particular*

protest, together with "the testimony and *all that pertained to the examination* as it was agreed" (Rec., fol. 233), including briefs of importer's counsel in support of the "protest" that had already been *formally* "put on record" (Rec., fols. 213-215), were physically in possession of, as well as directly brought to, the personal notice of the Collector (Rec., fols. 233, 234, 389, 65, 66, 213, 214, 215), then the ruling at Circuit excluding these records has deprived plaintiffs in error of the vital right to assert in Court what they had continuously contended for throughout the assessment proceedings.

4. It is respectfully submitted, that if there were no other error committed below, or if there were no other *protest* in this case, than that formally "put on record" (fol. 213), by the importer's counsel, and subsequently *with that record* delivered into the hands of the Collector (fol. 233), or if there were no other protest than the "brief," filed simultaneously by the importer's counsel with the Collector (followed as it was by an appeal to the Secretary), THE EXCLUSION OF THESE RECORDS, or of that part of them EVIDENCING by such brief or otherwise THE PROTESTS of plaintiffs, is fatal to the judgment now under review.

XI.

The excluded records of "the proceedings" tended to show that the Treasury regulations cited at Rec., pp. 135-137, were not obeyed by the appraising officers.

The Collector did not follow *Art. 427* (fol. 401) and as there required, adopt "one or the other valuation" of those certified to him as *the* result of the appraisement at which the general and merchant appraiser disagreed.

Nor did the customs officers estimate value "by ascertaining the price at which the owner holds his goods for sale," nor at the value of sales "in the country of production," nor "by reference to the market value of the component materials of the goods" and a "fair manufacturer's profit added," as directed by the Secretary of the Treasury (Rec., p. 136); nor did they regard *Regulation Article 432*, defining principal markets of the "country" of production and export (France) as those "subject

to the same supreme executive and legislative authority and control" (Rec., fol. 407); but, on the contrary, considered evidence of a market value in *London*, under importer's protest.

The excluded records shut out from proof several of the protests filed in writing.

XII.

Enough having been shown tending to show, as stated in one protest received in evidence, that there had been "no regular or lawful appraisement" (Rec., fol. 57), and that the Collector had not fully and fairly examined the goods (Rec., fol. 400), and that the irregular proceedings between the general appraiser and Collector had improperly been made the basis of the assessment in question, the exclusion at that stage of the trial of the evidence of the witness Perry (Rec., fol. 399), the expert then called to give direct evidence of actual market value "at the time and place of exportation in the principal markets of France" (see exception at fol. 409), was, it is submitted, an essential error, for which a new trial should be granted.

So, if the goods had no selling price in France, it was error to exclude competent evidence of their cost of manufacture (see exception at fol. 412).

XIII.

The right of the plaintiff to go to the jury upon the testimony of the Collector himself, showing what he did and what he omitted to do, and upon the partial records received in evidence without objection, and upon how much, if any, appraisement had in fact been made (for in its absence both penal and excessive duty was illegal), it is submitted, upon the grounds stated by counsel at Rec., fols. 413–414, has been erroneously refused. It was not a case, even as the evidence stood, for a direction. There was *some* evidence tending to support the questions asked to be submitted, and also tending to show,

on the part of the customs officers, "that which amounts to a fraud unquestionably" (Rec., fol. 77), as claimed by counsel for plaintiffs in error; and the exceptions to submit any of the six questions stated (p. 413) are additional grounds for a new trial.

XIV.

In whatever light this case be regarded, the fact protrudes that not only legally and meritoriously, but even *technically* speaking, there has been no appraisement.

The collector's act cannot be justified because based on the act of some other tribunal from which there is no review provided by law. There is no such tribunal.

Moreover, *out of three appraising officials* who acted on plaintiffs' appeal, *no two have agreed*. The merchant appraiser, the general appraiser and the collector, respectively, thought 42, 52 and 49 francs were the true values.

Even while the general appraiser was "willing" that 49 francs should be the estimate, he refused to withdraw his 52 franc report because it expressed "his convictions based upon the evidence."

The disagreement exhibits the justice, equity and merits of the plaintiffs' demand for the trial which has been denied them.

The case is not, therefore, one where under any view of the statute or the powers of Congress a certificate of dutiable values excludes evidence *aliunde*.

XV.

The judgment should be reversed and a new trial awarded.

HENRY EDWIN TREMAIN,
Counsel for Plaintiffs in Error.

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FILED
DEC 17 1883

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

STEWART & CO.
vs.
MERRITT, COLLECTOR, &C. } No. 161.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

STEWART & CO.
vs.
MERRITT, COLLECTOR, &c. } No. 161.

BRIEF FOR THE UNITED STATES.

This was an action against a collector to recover excessive duties exacted upon an importation of gloves in the year 1878.

Upon the case made by the plaintiff the court directed a verdict for the defendant. (Folios 412–15.)

The facts will be found stated in the careful and instructive brief of the learned counsel for the plaintiff in error.

Twenty-seven errors are assigned therein. Eighteen of these concern the exclusion of various pieces of evidence tendered by the plaintiff, and the others the refusal of the

court to submit to the jury certain questions which the plaintiff contended arose upon the case as made by him. (Brief, pp. 3, &c.)

In general, the difference between the plaintiff and defendant is as to the right of an importer to question by suit the findings of appraisers as to the *value* of goods imported.

The plaintiffs contend that such findings may be so reviewed. This is denied by the Government, and this denial has been sustained in the court below.

The principle contended for by the learned counsel is thus stated by him :

> "The right to sue an officer of the Government in an ordinary action of assumpsit having been granted by act of Congress, the *merits* of the claim upon the facts and the law constitute the only judicial restriction. These merits are to be determined by the judiciary department of the Government without the bias or prejudice that may result from the acts of any executive functionary. True, presumptions attend official acts ; but such presumptions may be destroyed by evidence. (Page 11.)
>
> "This is not a case assailing the general principle that ' when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and the exercise confided to his or their discretion, the acts so done are binding and valid as to the subject matter.' Because (1) [here] such acts are made reviewable in a suit at law, and (2) customs officers have neither power nor jurisdiction to exact duty beyond the amount regulated by law, and (3) the lawful duty depends on ascertained facts resulting from

inspection of imported merchandise in connection with proof, or knowledge of its character, description, uses, and value.

"The importer's tax depends on the law as found to be applicable to the facts relating to his goods in each case. The right to bring an action involves the right to determine those facts, so far as they are essential to be ascertained, in testing the right and amount of the tax. Unless the scope of inquiry by the court has been expressly limited by statute the facts and law pertinent to the merits of the tax are to be adjudicated." (Pages 13, 14.)

The statutes material to the contention of the Government are as follows:

"Rev. Stats., SEC. 2899. No merchandise liable to be inspected or appraised shall be delivered from the custody of the officers of the customs, until the same has been inspected or appraised, or until the packages sent to be inspected or appraised shall be found correctly and fairly invoiced and put up, and so reported to the collector. The collector may, however, at the request of the owner, importer, consignee, or agent, take bonds, with approved security, in double the estimated value of said merchandise, conditioned that it shall be delivered to the order of the collector, at any time within ten days after the package sent to the public stores has been appraised and reported to the collector. If in the mean time any package shall be opened, without the consent of the collector or surveyor given in writing, and then in the presence of one of the inspectors of the customs, or if the package is not delivered to the order of the collector, according to the condition of the bond, the bond shall, in either case, be forfeited.

"SEC. 2900. The owner, consignee, or agent of any merchandise which has been actually purchased, or procured otherwise than by purchase, at the time, and not afterward, when he shall produce his original invoice to the collector and make and verify his written entry of his merchandise, may make such addition in the entry to the cost or value given in the invoice as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the period of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district the same may be imported or entered may cause such actual market value or wholesale price to be appraised; and if such appraised value shall exceed by ten per centum or more the value so declared in the entry, then, in addition to the duties imposed by law on the same, there shall be collected a duty of twenty per centum ad valorem on such appraised value. The duty shall not, however, be assessed upon an amount less than the invoice or entered value.

"SEC. 2902. It shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector and naval officer, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and actual market value and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the merchandise at the time of exportation, and in the principal markets of the country whence the same has been imported into the United States, and the number of such yards, parcels, or quantities, and such actual market value or wholesale price of every of them as the case may require. All such merchandise, being manufactured of wool, or whereof wool

shall be a component part, which shall be imported into the United States in an unfinished condition, shall, in every such appraisal, be estimated to have been at the time of exportation, and place whence the same was imported into the United States, of as great value as if the same had been entirely finished.

"SEC. 2906. When an ad valorum rate of duty is imposed on any imported merchandise, or when the duty imposed shall be regulated by, or directed to be estimated or based upon, the value of the square yard, or of any specified quantity or parcel of such merchandise, the collector within whose district the same shall be imported or entered shall cause the actual market value, or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same has been imported, to be appraised, and such appraised value shall be considered the value upon which duty shall be assessed.

"SEC. 2907. In determining the dutiable value of merchandise, there shall be added to the cost, or to the actual wholesale price or general market-value at the time of exportation in the principal markets of the country from whence the same has been imported into the United States, the cost of transportation, shipment, and transshipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water, to the vessel in which shipment is made to the United States; the value of the sack, box, or covering of any kind in which such merchandise is contained; commission at the usual rates, but in no case less than two and a half per centum; and brokerage, export duty, and all other actual or usual charges for putting up, preparing, and packing for transportation or shipment. All charges of a general character incurred in the purchase of a general invoice shall be distributed pro

rata among all parts of such invoice, and every part thereof charged with duties based on value shall be advanced according to its proportion, and all wines or other articles paying specific duty by grades shall be graded and pay duty according to the actual value so determined.

"SEC. 2908. All additions made to the entered value of merchandise for charges shall be regarded as part of the actual value of such merchandise, and if such addition shall exceed by ten per centum the value declared in the entry, in addition to the duties imposed by law, there shall be collected a duty of twenty per centum on such value. But nothing contained in this and the preceding section shall apply to long combing or carpet wools costing twelve cents or less per pound, unless the charges so added shall carry the cost above twelve cents per pound, in which case one cent per pound duty shall be added:

"SEC. 2922. The appraisers, or the collector and naval officer, as the case may be, may call before them and examine upon oath any owner, importer, consignee, or other person, touching any matter or thing which they may deem material in ascertaining the true market-value or wholesale price of any merchandise imported, and require the production on oath to the collector, or to any permanent appraiser, of any letters, accounts or invoices, in his possession relating to the same. All testimony in writing, or depositions, taken by virtue of this section, shall be filed in the collector's office, and preserved for future use or reference, to be transmitted to the Secretary of the Treasury when he shall require the same.

"SEC. 2923. If any person so called shall neglect or refuse to attend, or shall decline to answer, or shall, if required, refuse to answer in writing any interrogatories, and subscribe his name to his deposi-

tion, or to produce such papers, when so required by an appraiser or collector and naval officer, he shall be liable to a penalty of one hundred dollars; and if such person be the owner, importer, or consignee, the appraisement which the appraisers, or collector and naval officer, where there are no legal appraisers, may make of the merchandise shall be final and conclusive.

"SEC. 2929. The principal appraisers shall revise and correct the report of the assistant appraisers as they may judge proper, and report to the collector their decision thereon. If the collector deems any appraisement of goods too low he may order a reappraisement, either by the principal appraisers or by three merchants designated by him for that purpose, who shall be citizens of the United States; and may cause the duties to be charged accordingly.

"SEC. 2930. If the importer, owner, agent, or consignee of any merchandise shall be dissatisfied with the appraisement, and shall have complied with the foregoing requisitions, he may forthwith give notice to the collector, in writing, of such dissatisfaction; on the receipt of which the collector shall select one discreet and experienced merchant to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants, citizens of the United States, familiar with the character and value of the goods in question, to examine and appraise the same, agreeably to the foregoing provisions; and if they shall disagree the collector shall decide between them; and the appraisement thus determined shall be final and deemed to be the true value, and the duties shall be levied thereon accordingly.

"SEC. 2949. The Secretary of the Treasury from time to time shall establish such rules and regulations, not inconsistent with the laws of the United States, to secure a just, faithful, and impartial ap-

praisal of all merchandise imported into the United States, and just and proper entries of such actual market-value or wholesale price thereof, and of the square yards, parcels, or other quantities, as the case may require, and of such actual market-value or wholesale price of each of them. The Secretary of the Treasury shall report all such rules and regulations, with the reasons therefor, to the then next session of Congress."

Upon behalf of the collector, it is submitted:

1. That by express words (Secs. 2906, 2923, 2930, contrasted with 2931) Congress has made the valuation by *appraisers* to be "*the value upon which duty shall be assessed*," "*the true value*," and "*final*" for levying duties. So that it must follow that if the appraisers act within the terms of their statutory commission, and without fraud, the results of that action become an unchangeable *factor* in ascertaining the consequent duty, as also all incidental penalties, &c., before all authorities and tribunals whatsoever. All officials who have special authority to revise upon appeal the action of the first appraisers, are of course themselves appraisers within this rule; amongst others necessarily the collectors when deciding "between" the *general* and *merchant* appraisers. (Sec. 2930.)

It is not the true value absolutely or abstractly considered upon which duties are assessed, but that "true value" which is declared by appraisal.

This is a general principle in taxation. It is, for instance, the *assessed*, not the abstractly true value of land or personalty, which universally enters into the amount of taxes upon those objects, whether imposed by a State or by the Nation. Where the special statutory provisions for appeal against assessments have been exhausted, the amount of tax is, so far, *fixed* for all purposes and before all judicial tribunals, even though it be a case in which "representation" also is concerned.

This principle has been recognized in this court in cases candidly cited by the learned counsel for the plaintiffs. Under the general and necessary prevalence of the principle above stated, wherever taxation prevails, slight variations thereabouts in the wording of the successive statutes by which it is recognized in case of *duties* can be of no importance. I submit, *ex. gr.*, that the language of Belcher *vs.* Linn, 24 How., at page 522, is as applicable in 1883 as in 1860.

> "As was said by this court, in Bartlett *vs.* Kane, 16 How., 272, the appraisers are appointed with powers, by all reasonable ways and means to appraise, estimate, and ascertain the true and actual market value and wholesale price of the importation. The exercise of these powers involves knowledge, judgment, and discretion. We hold, as was held in that case, that when power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are in general binding and valid as to the subject-matter. The only questions which can arise between an individual and the public, or any person, denying their validity, are power in the officer and fraud in the party. All other ques-

tions are settled by the decision made or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal or other revision is provided for by some appellate or supervisory tribunal prescribed by law."

2. It is too late to impeach the constitutionality of statutory provisions excluding tax-payers from the courts in contentions like this about the machinery for levying taxes. (Murray *vs.* Hoboken Co., 18 How., 274. Springer *vs.* United States, 102 U. S., 586.)

And it may be said that such provisions seem to be less questionable in case of duties upon importations than in cases of ordinary taxes; for it seems plain that it is for Congress to define absolutely the terms upon which any property, real or personal, shall be first brought within the jurisdiction of the United States. Accordingly, it may say that such property shall not be annexed or imported at all; or that, short of exclusion, it shall be introduced only in pursuance of such otherwise valid statutory conditions and proceedings as may be provided.

3. No "irregularity" affecting the powers of the appraisers was suggested in any evidence tendered by the plaintiffs.

Hildreth's testimony was tendered (folio 70) "to show *want of power* on the part of the collector to make the appraisement in question, on the evidence before him." So *Cooper's* (folio 76), and at other places in the record, the counsel below tenders evidence which he speaks of as showing *irregularity in* the proceedings before the appraisers.

But upon looking into such proposed evidence it seems directed entirely to an impeachment of the manner in which the *discretion* of the appraisers had been exercised; for which purpose, as I have already submitted, it was incompetent.

4. I do not find that the brief of the learned counsel contends for any irregularity going to affect jurisdiction in the course of the proceedings for appraisement except before the collector himself, and these were as follows: Upon September 19, 1878, the merchant appraiser and general appraiser made appraisals which differed, the former fixing the value of the *gloves* at about 42 francs per dozen and the latter at about 52. These were duly reported to the collector. After consideration of them the collector wrote a note to the general appraiser, dated October 10, suggesting a re-examination, and in reply the latter reduced his previous valuation to 49 francs. This latter figure was adopted by the collector. The whole matter appears upon pages 16 to 21, and also 74 of the record.

In custom-house proceedings, especially in such a large place as New York, the formality and precision of a court of justice are not to be expected. It is sufficient if a substantial propriety is observed. Section 2930 requires an *association* of the merchant and general appraisers, a *difference*, and a consequent *decision* by the collector *between them*. All three incidents marked this case to the end, with the addition that after *association* and report of the original *difference*, the general appraiser upon further consideration *reduced* his valuation.